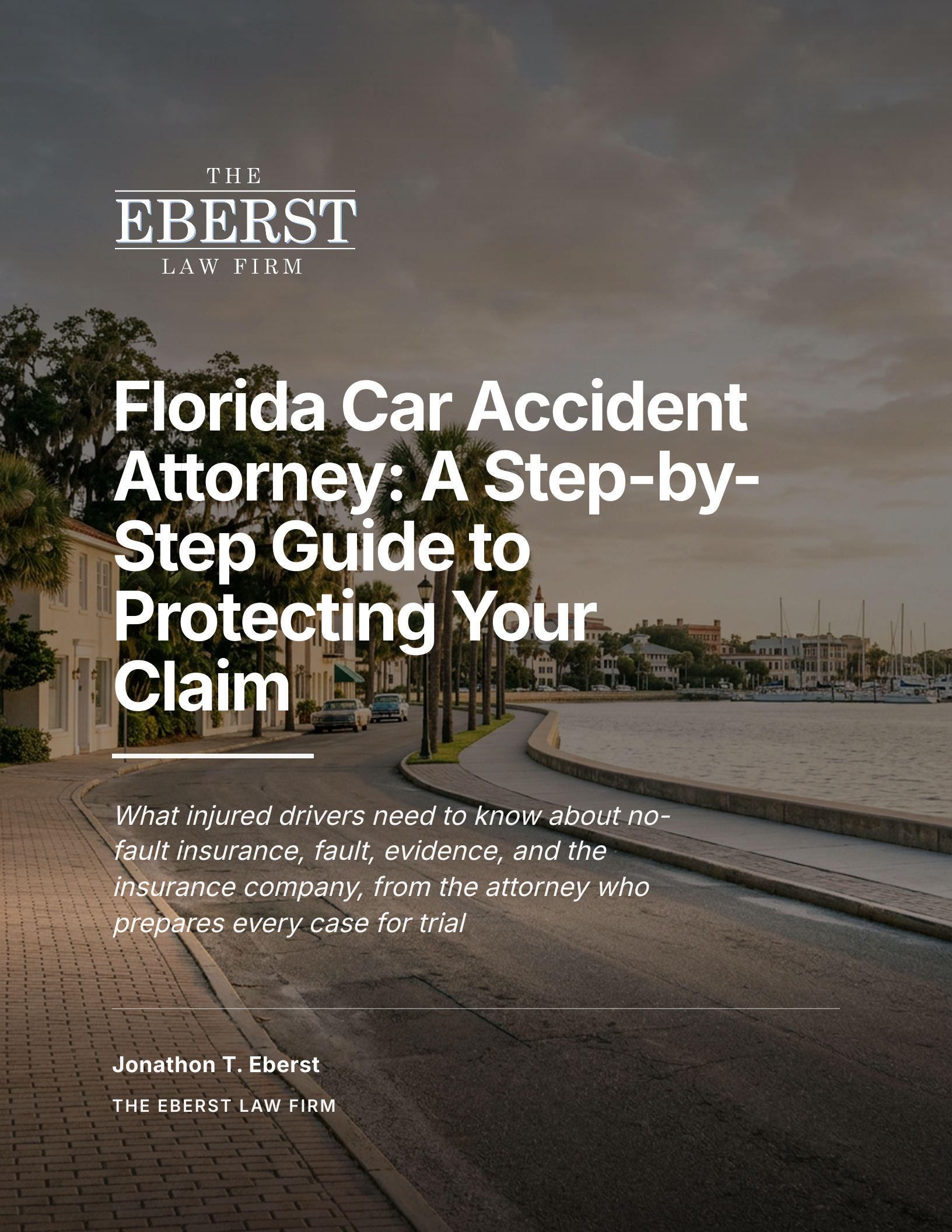


THE EBERST LAW FIRM

Florida Car Accident Attorney: A Step-by-Step Guide to Protecting Your Claim

What injured drivers need to know about no-fault insurance, fault, evidence, and the insurance company, from the attorney who prepares every case for trial

Jonathon T. Eberst

THE EBERST LAW FIRM

Table of Contents

1. Foreword
2. About the Author
3. Introduction
4. Chapter 1: What to Do at the Scene of a Florida Car Accident
5. Chapter 2: How Florida No-Fault Insurance Pays Your First Medical Bills
6. Chapter 3: Fault After 2023: What Florida Law Now Asks of You
7. Chapter 4: Insurance Coverage in Florida: Bodily Injury, Uninsured Drivers, and Gaps
8. Chapter 5: How the Type of Crash Shapes the Injury and the Claim
9. Chapter 6: The Florida Crash Report: What It Does and Does Not Do
10. Chapter 7: Evidence That Wins Claims: Photographs, Witnesses, and Video
11. Chapter 8: Medical Records and Treatment: Why Gaps Help the Insurance Company
12. Chapter 9: What the Insurance Company Wants From You
13. Chapter 10: Experts, Reconstruction, and Proving What Happened
14. Chapter 11: From Claim to Settlement: The Steps of a Florida Car Accident Case
15. Chapter 12: When the Insurance Company Says It Was Your Fault
16. Frequently Asked Questions
17. Conclusion
18. Final Takeaways
19. Appendix: Sources & Methodology
20. Legal Notice

Foreword

A Florida car accident claim is a legal, medical, and financial process that begins at the side of the road and ends when an injured person has been paid fairly or a jury has decided the case. It runs on a short list of decisions: what to document at the scene, when to see a doctor, whose insurance pays first, who was at fault, and what to say when the other driver's insurance company calls. This book follows that process in the order a person lives it.

Jonathon T. Eberst is the attorney who explains it here. He has run The Eberst Law Firm since September 24, 2009, the day after he was sworn into The Florida Bar. Car accidents make up about 90 percent of the firm's cases, and the firm works from offices in Stuart, Gainesville, and Daytona Beach. The conversations this book is built from were recorded for his podcast, The Eberst Advantage: Florida Accident and Injury Law, where he answers the questions injured Floridians ask after a crash. The show is also on Apple Podcasts and the firm's YouTube channel.

The opening chapters cover the first days. They begin with the scene itself, then move to the no-fault coverage that pays first, the 2023 change to Florida's fault rule, and the gaps in insurance that decide whether a claim can be paid at all. The middle chapters explain what a claim is made of: how different crashes injure the body, what a crash report can and cannot do, the evidence that disappears, and the medical record that carries the injury into the claim. The later chapters follow the claim outward, to the insurance company's tactics, the experts who reconstruct a crash, the steps from first call to settlement, and the cases where the insurance company says the injured driver caused the crash.

Three chapters answer the questions a reader is most likely to bring on the first day. The chapter on the scene answers the question of urgency, because the photographs, the witnesses, and the video from the first hours shape everything that follows. The chapter on no-fault insurance answers the question of money, because personal injury protection starts paying quickly but only for people who are treated within its deadline. The chapter on the insurance company answers the question of leverage, because a recorded statement or a signed release can shrink a claim before a lawyer is ever called.

Florida law shapes every chapter. The state's no-fault system, its bar on recovery for a driver found more than half at fault, and its two-year deadline set the rules, and the chapters name them where they apply, with a link to the statute for readers who want to read the text.

The book is plain about its limits. Florida does not require drivers to carry bodily injury coverage, and Eberst says that in a good share of cases there is nothing to recover. He also says what the law now asks of an injured driver on the question of fault, and how short the clock is. A guide that leaves out the unwelcome parts is a brochure, and this one is not.

What stands out in these chapters is the habit of mind behind them. The firm prepares every case as if it is going to trial, and that preparation begins on the first phone call. The same habit shows in the advice. Document the scene. See a doctor. Keep your comments about fault to a minimum. Treat the insurance company’s first offer as an opening position.

Read this before the insurance process starts to feel routine. Read it because the first days after a crash usually produce the evidence that decides the last. A reader who finishes it will know what to do, what to hold back, and when to call for help.

About the Author



Jonathon T. Eberst, founding attorney of The Eberst Law Firm, Stuart, Florida

Jonathon T. Eberst is a Florida personal injury trial attorney who has focused on car accident claims since he founded The Eberst Law Firm in September 2009. He practices only in Florida, and he is the managing partner of a firm that represents injured people across the state.

Eberst was born in Lapeer, Michigan, and moved to Jensen Beach, Florida, in 1983, just before his second birthday. Before college he worked as an electrician, a boat captain, and a hotel front office manager in Stuart. He took his first college classes part-time in Stuart, finished an associate degree at Santa Fe Community College, and earned a finance degree at the University of Florida. He then attended Barry University School of Law in Orlando, where he received the Book Award for the highest grade in trial advocacy and served as a certified legal intern. He was admitted to The Florida Bar on September 23, 2009, and remains a member in good standing, according to his Florida Bar profile.

He opened the firm the day after he was sworn in, building it beside his older brother. The firm has grown into a team of attorneys. Eberst practices from the firm's Stuart headquarters on Southeast Seminole Street, and the firm also serves clients from its Gainesville office on East University Avenue and from the firm's Daytona Beach team on West International Speedway Boulevard.

Eberst is a member of the Million Dollar Advocates Forum, an honor for settlements and verdicts above a million dollars, and has been recognized as a Super Lawyer. One case he points to began when other law firms told a client she was at fault for a crash. His firm took the case, and a denied-liability claim ended in a recovery of just under a million dollars. He also mentors lawyers who are starting their own firms.

About 90 percent of the firm's cases are car accidents, so the questions in this book are the ones his clients ask first. He prepares every case as if it is going to trial. He describes the firm's reason for existing as helping people who are down on their luck, and he does not want insurance companies to bully them. Eberst also hosts The Eberst Advantage: Florida Accident and Injury Law. To talk through a car accident claim, schedule a free consultation with the firm.

Introduction

If you are reading this after a crash, start with Chapter 1. If you are reading it before one, you are ahead of most people.

Most drivers in Florida have never been in a serious accident. That is good news until it happens. Then you are asking a stranger on the phone how your medical bills get paid, who is at fault, and whether you should sign what they send you. You are doing it while you are hurt.

I wrote this book from conversations I have had about exactly that. Each chapter is one of the questions people bring to us. I have tried to answer them the way I would at a first meeting, in plain words, with the parts that are not good news left in.

Three ideas run through every chapter.

The first is evidence. It disappears fast. A witness goes home, a camera records over itself, and a car gets repaired. What you gather in the first days is often what decides the case.

The second is treatment. Your medical record is the story of your injury, and the insurance company reads it for gaps. See a doctor, and keep going until the doctor says you are done.

The third is the insurance company. Its interest is to pay as little as it can. Some of what it asks for, such as a recorded statement, you do not have to give. Some of it, such as a signed release, can end a claim in one afternoon.

You will also see two limits stated plainly. Florida law is hard on injured people in some ways. It does not require drivers to carry bodily injury coverage, and since 2023 it bars recovery for a driver found more than half at fault. I would rather you hear that from me now than find out later.

I am not a doctor, and this book is not medical advice. It is not legal advice for your particular case either. Every case turns on its own facts, and the person who can tell you where you stand is an attorney who has looked at yours.

We prepare every case here as if it is going to trial. That starts on the first phone call, and it is the reason the early steps in this book matter so much. Read it in order the first time. After that, use the chapter that matches your situation.

01

CHAPTER ONE

What to Do at the Scene of a Florida Car Accident

A crash gives you very little time to make decisions you have never had to make before. Most people in Florida have not been in one. They do not know who to call. They do not know where to get the car fixed or who is going to pay for it.

Clients have called me from the accident scene because they need direction, and that is why this book starts at the side of the road. The first minutes after a crash set up everything that follows: the insurance claim, the medical record, and, if it comes to it, the lawsuit. This chapter covers getting help, documenting the scene, and finding the people and cameras that saw what happened.

> *"If you can safely pull over to the side of the road, then call 911. You want to make sure that you get officers out there immediately to respond to the accident. They can gather evidence. They can take photos. They can take statements from witnesses."*
>
> Jonathon Eberst, on the first steps after a crash

Call 911 and get officers to the scene

Pull over if you can do it safely, then call 911. I want officers on the scene right away. They gather evidence, take photographs, and talk to the witnesses standing there. If you are injured and feel you need the hospital, you can request EMS from the scene.

Chapter 6 explains why the officer's report matters later. For now the point is simple: get them there.

Photograph what you can safely reach

If you are able to, take photos of the whole scene. Photograph the damage to your vehicle and to every other vehicle involved. Photograph anything on the surrounding roadway. If there are skid marks, capture them. If a traffic light is not working, capture that too.

Do all of it only when it is safe. No photograph is worth stepping into traffic.

Write down what people say

Note any statements anyone at the scene makes. At intersections, both drivers usually blame each other. One says, "I had a green light." The other says, "No, I had a green light." Then it becomes, "Well, I had a green arrow," and, "No, you couldn't have had a green arrow." Neither driver wants to be at fault, so what was said in the first few minutes can matter later.

Find the witnesses before they leave

Look around for anyone who saw the crash. Florida has a lot of snowbirds, people who come down from up north for the winter. If you do not get a snowbird witness's statement right away, that person may be back home in another state. They become much harder to reach, and some do not want any part of what they saw.

For our clients, we request written statements while the memory is fresh. If you are doing it yourself, get a name and a phone number at the very least. The firm's Stuart car accident team does the same for local clients.

Ask about cameras

Look for businesses with cameras that may have caught the crash. Ask them to retain the video or give you a copy. A lot of these systems copy over their footage within twenty or thirty days. Waiting a month can mean the footage is gone.



Four numbered icons: call 911, photograph the scene, get witness names, ask about cameras

Watch what you say

People can hurt a claim with their words at the scene. They may give information or admit fault when the fault was not theirs. You do not have to decide who caused the crash on the shoulder of the road. Chapter 3 covers how fault works in Florida, and why it deserves a calmer conversation than the one you will have on the roadside.

Common Questions

What should I do right after a car accident in Florida?

Pull over if you can do it safely and call 911 so officers can respond. If you are injured, you can request EMS. Photograph the scene, every vehicle, and the roadway. Look for witnesses and cameras, and keep your comments about fault to a minimum until you understand your rights.

Should I take photos even if the police come?

Yes, if you can do it safely. Officers can take photos, gather evidence, and take witness statements, but your photos show what you saw. Capture the damage to your car and the other vehicles, anything on the roadway, skid marks, and a signal that is not working.

How fast do I need to get witness information?

As fast as you can, and ideally before people leave the scene. A snowbird witness may go back to another state, and weeks later that person can be hard to find or unwilling to help. Written statements taken while the memory is fresh carry more weight than a recollection months later.

How long do businesses keep security video?

In my experience, a lot of them copy over their footage within twenty or thirty days. If a camera faces the crash, ask the business to retain the video or give you a copy right away. Do not assume it will still be there when you finally get around to asking.

Chapter Reflection

The roadside is the one place where the facts are still fresh. A skid mark gets driven over, a witness drives home, and a camera records over itself. Everything that comes later in a claim, from the first call with an adjuster to a jury, is built from what somebody captured in those first hours.

02

CHAPTER TWO

How Florida No-Fault Insurance Pays Your First Medical Bills

After a crash in Florida, one question comes up fast: how are my medical bills going to get paid? People will tell you that Florida is a no-fault state. That phrase sounds like it settles who is to blame. It does not. It settles whose insurance pays first.

This chapter explains personal injury protection, usually called PIP, along with the deadline and the condition that decides whether it pays at all.

> *"In Florida, we have personal injury protection, which is the Florida no-fault rule. All that means is that your own auto insurance pays your first $10,000 of your medical bills at a rate of 80% and lost wages at a rate of 60%."*
>
> Jonathon Eberst, on Florida no-fault coverage

What no-fault means

No-fault is the common name for personal injury protection, or PIP. It is part of Florida law that you are required to carry PIP for your own injuries. Two things are covered. Medical bills are covered up to the first $10,000, with the policy paying 80 percent of them. Lost wages are covered too, at 60 percent. Florida's personal injury protection statute, section 627.736, sets out the coverage.

It does not matter who caused the crash. If you are hurt, your own policy responds first.

The 14-day rule

PIP comes with a deadline. You must receive initial services and care within 14 days of the crash for the medical benefits to be paid. Miss that window and the medical coverage you paid for may not pay at all.

I tell people to see a doctor right away, and this is one more reason. Chapter 8 covers medical treatment and how the insurance company reads a delay. The firm's article on what to expect from PIP coverage after a Florida car accident looks at the same subject.

The emergency medical condition requirement

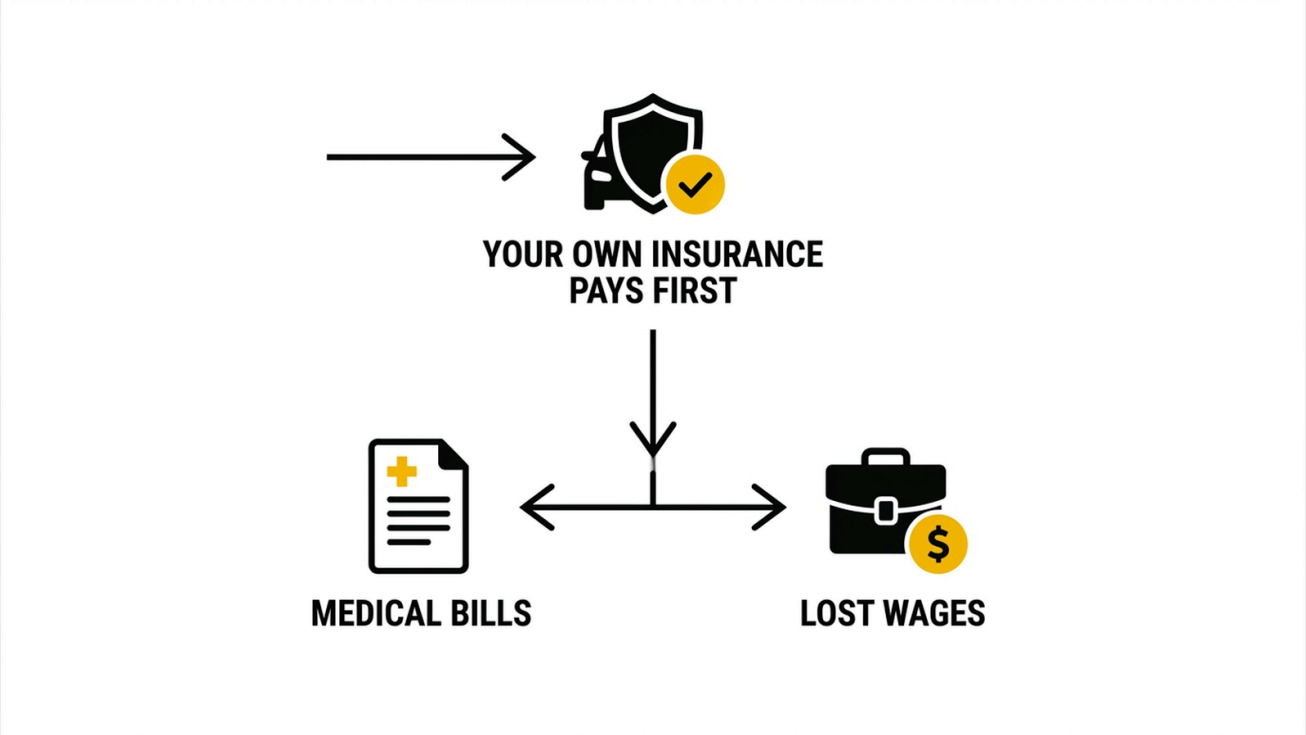
There is a second condition inside PIP. It is called an emergency medical condition, or EMC. You must be treated by certain providers in order to determine whether you suffered an emergency medical condition as a result of the crash.

If no medical provider determines that you have one, your PIP benefits may be limited to only $2,500. That is a small number against a real injury.

Why $10,000 does not go far

We all know how much hospitals cost. Just to go to a hospital costs far more than $10,000. A first ER visit can use up much of the coverage before any follow-up care begins.

Unfortunately, in Florida our laws are not the best for recovery for our clients. PIP gets your treatment started. It does not make you whole, and the firm's overview of how Florida's no-fault insurance system works goes further. For that, a claim against the at-fault driver is often needed, which is what the rest of this book is about. One limit applies to that claim: to recover damages for pain and suffering, the injury must meet Florida's permanence threshold, which Chapter 5 explains.



Your own insurance pays first, covering medical bills and lost wages

Collision coverage and your car

PIP covers your injuries. It does not repair your vehicle. If you carry collision coverage, that coverage may pay for the damage to your car. Whether you carry it, and what it pays, is set by the policy you bought before the crash.

Common Questions

What is PIP insurance in Florida?

PIP stands for personal injury protection, the coverage people call Florida no-fault. Your own auto insurance pays your first $10,000 of medical bills at a rate of 80 percent, and lost wages at 60 percent. Florida requires you to carry it for your own injuries.

Does PIP pay if the crash was my fault?

Yes. As I tell people, it does not matter who is at fault. Your own auto insurance pays for your injuries and your medical treatment regardless of fault. Whether you can also recover from the other driver is a separate question, covered in the next chapter.

How soon do I need to see a doctor to use PIP?

You must receive initial services and care within 14 days of the crash for PIP medical benefits to be paid. Waiting past that window is the single easiest way to lose that coverage.

What happens if no doctor finds an emergency medical condition?

If no medical provider determines that you have an emergency medical condition, your PIP benefits may be limited to only $2,500. That is why the type of provider who examines you matters, and why waiting to be seen puts the full coverage at risk.

Chapter Reflection

PIP is a safety net with a short fuse. It pays regardless of fault, but only for people who get treated in time and seen by the right providers. After that window closes, the medical coverage you paid for may not be there when you reach for it.

03

CHAPTER THREE

Fault After 2023: What Florida Law Now Asks of You

Fault changed in Florida in 2023. For many years, a driver who was one percent at fault could still recover something. That is no longer the rule. The law now asks a harder question, and it asks it sooner.

This chapter covers what the change means, why proving the other driver's fault comes first, and the shorter clock that came with it.

> *"In Florida, it's important to identify the at-fault party, because our law changed in 2023 where if you're determined to be more than 50% at fault for a crash, you may be barred from recovery completely. So you want to make sure that you can establish that you were not at fault for the crash, that somebody else was at fault. And you want to gather as much evidence as you can to help prove that theory."*
>
> Jonathon Eberst, on why fault comes first

What changed in 2023

In 2023, House Bill 837 was enacted, and it changed the picture for car accident claims across Florida. Before it, a driver who was only a little at fault could still make a recovery. Now, if you are determined to be more than 50 percent at fault for a crash, you may be barred from recovery completely. Florida's modified comparative negligence statute sets that line.

A jury decides the percentages, which is one reason the evidence you collect early matters so much.

Why you start with the other driver's fault

Because the bar is so severe, the first job is to establish that you were not at fault and that somebody else was. Then you gather as much evidence as you can to prove it. That means the steps in Chapter 1 and the evidence in Chapter 7. The firm's article on how Florida's comparative negligence law affects a car accident claim sits alongside this chapter.

If you think you may share some of the fault, do not decide on your own that the claim is over. That is a conversation to have with an attorney early, before anyone writes down a number.

What your own insurance does if you were at fault

A driver who caused the crash is not left with nothing. If you have collision coverage, it may pay for damage to your vehicle. Your own PIP pays for your injuries and medical treatment regardless of who is at fault, as Chapter 2 explained.

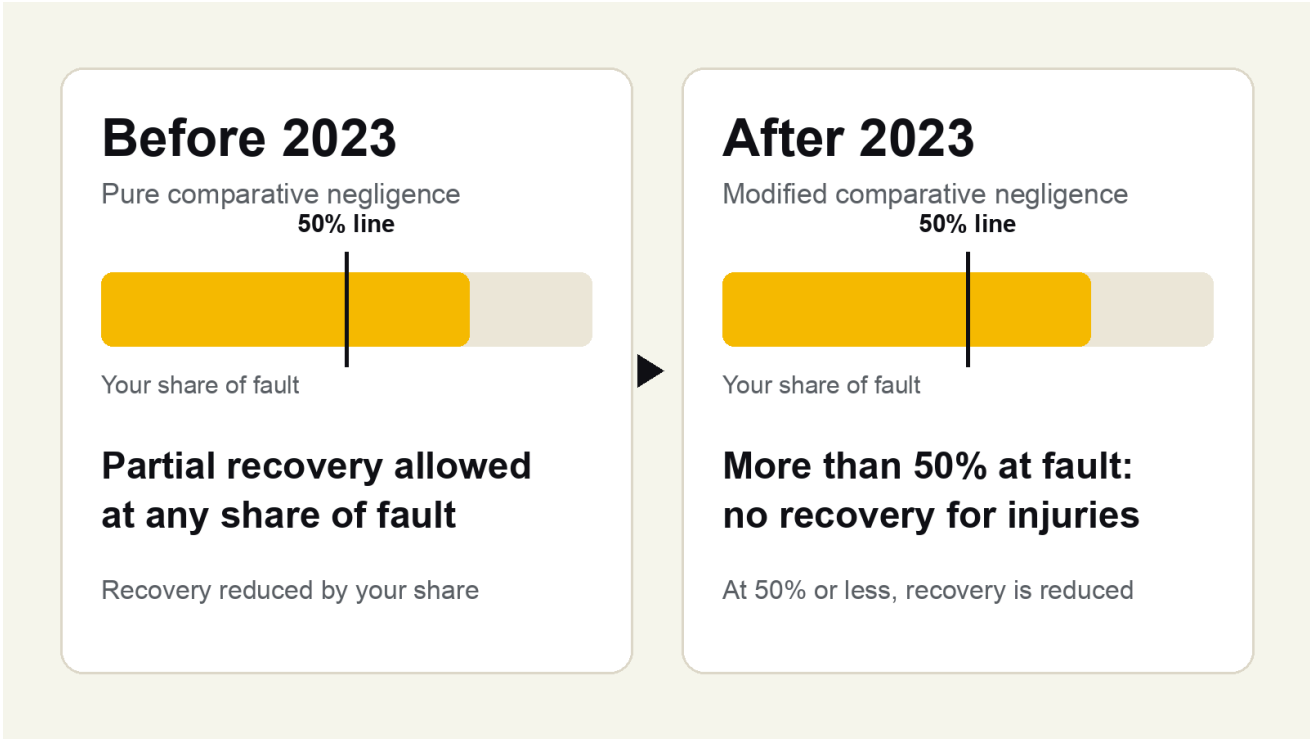
What you cannot count on is a recovery from the other driver if a jury puts most of the fault on you.

The shorter deadline

House Bill 837 also changed how long you have to bring a lawsuit. For crashes after March 24, 2023, the statute of limitations on negligence claims in Florida is two years. Florida's negligence limitation, section 95.11, sets the clock.

Two years sounds like a long time. Between treatment, records, and negotiation, it is shorter than people expect. I say it the same way every time: call us right away.

Crashes with a government vehicle follow different rules. If the other driver was a police officer, a firefighter, an ambulance crew, or another state or local government employee on the job, the claim falls under Florida's sovereign immunity law, section 768.28. You must present the claim in writing to the government before you can sue, and the law caps what you can collect from a government entity at $200,000 per person and $300,000 per incident. If a government vehicle was involved, call an attorney right away.



Florida fault rules before and after 2023: recovery barred when you are more than 50 percent at fault

Common Questions

What is Florida's 51 percent rule?

Since 2023, if a jury determines you were more than 50 percent at fault for a crash, you may be barred from recovering damages at all. That is a change from the old rule, under which even a driver who was one percent at fault could still recover.

Can I recover if I was partly at fault?

It depends on how a jury assigns the fault. Being partly at fault does not automatically end a claim, but the law now bars recovery above the 50 percent line. Do not decide on your own that you have no case. Talk to an attorney.

How long do I have to file a car accident lawsuit in Florida?

For crashes after March 24, 2023, the statute of limitations on negligence claims is two years, shortened by House Bill 837. Because treatment, records, and negotiation all take time, I tell people to call an attorney right after the crash instead of counting down the months. The firm has also published an article on Florida's statute of limitations for different injury cases.

Chapter Reflection

The new rule moved the fight to the beginning. A claim that once could absorb some early mistakes now has to prove, from the start, whose fault the crash was. The people who do best are the ones who treated the first week as the beginning of a case.

04

CHAPTER FOUR

Insurance Coverage in Florida: Bodily Injury, Uninsured Drivers, and Gaps

Two drivers can cause the same crash and leave two completely different outcomes behind. The difference is often insurance. One at-fault driver carries coverage that can pay for an injury. The other carries nothing.

Florida makes this problem worse than most states do, and I would rather you hear it from me before a crash than after one.

> *"You know, the old statement, you can't get blood from a stone. These people drive around with no insurance and they have nothing. So they cause these huge injuries, life-altering injuries."*
>
> Jonathon Eberst, on drivers who carry no coverage

Bodily injury coverage is optional here

Bodily injury coverage is the part of a policy that pays another person when you injure them. Florida does not require it. In Florida it is an elective coverage, which means a driver can legally be on the road without it.

If you carry bodily injury coverage, your insurance company pays for the injuries of another person you hurt. If you do not, a person you hurt may have nothing to collect from but you.

What limits people buy

Commonly, people carry $10,000 of bodily injury coverage. From there you see limits of $25,000, $50,000, $100,000, $250,000, and $500,000. People with higher limits often add an umbrella policy.

Higher limits matter to you in both directions. They protect you if you cause a crash and injure somebody, because the coverage can protect you from being sued personally.

When the other driver has nothing

This is the part I find hardest. Florida has no bodily injury requirement, and so many times we see horrible collisions where the person who caused the crash has no coverage. The injuries can be as serious as paralysis, missing limbs, or death.

I would say probably 35 to 40 percent of the time, there is nothing we can recover for our clients. That is a hard number to say out loud, and it is why I will not oversell a claim to anybody.

Uninsured and underinsured motorist coverage

The coverage that helps when the other driver has nothing is one you buy yourself. It is called uninsured and underinsured motorist coverage, commonly abbreviated UM or UIM, and it sits on your own vehicle's policy. Florida's uninsured motorist statute, section 627.727, governs it.

Uninsured motorist coverage is subject to the same permanence threshold for pain and suffering damages that Chapter 5 describes. If you do not have it, a lot of times we may not be able to make a recovery for you at all.

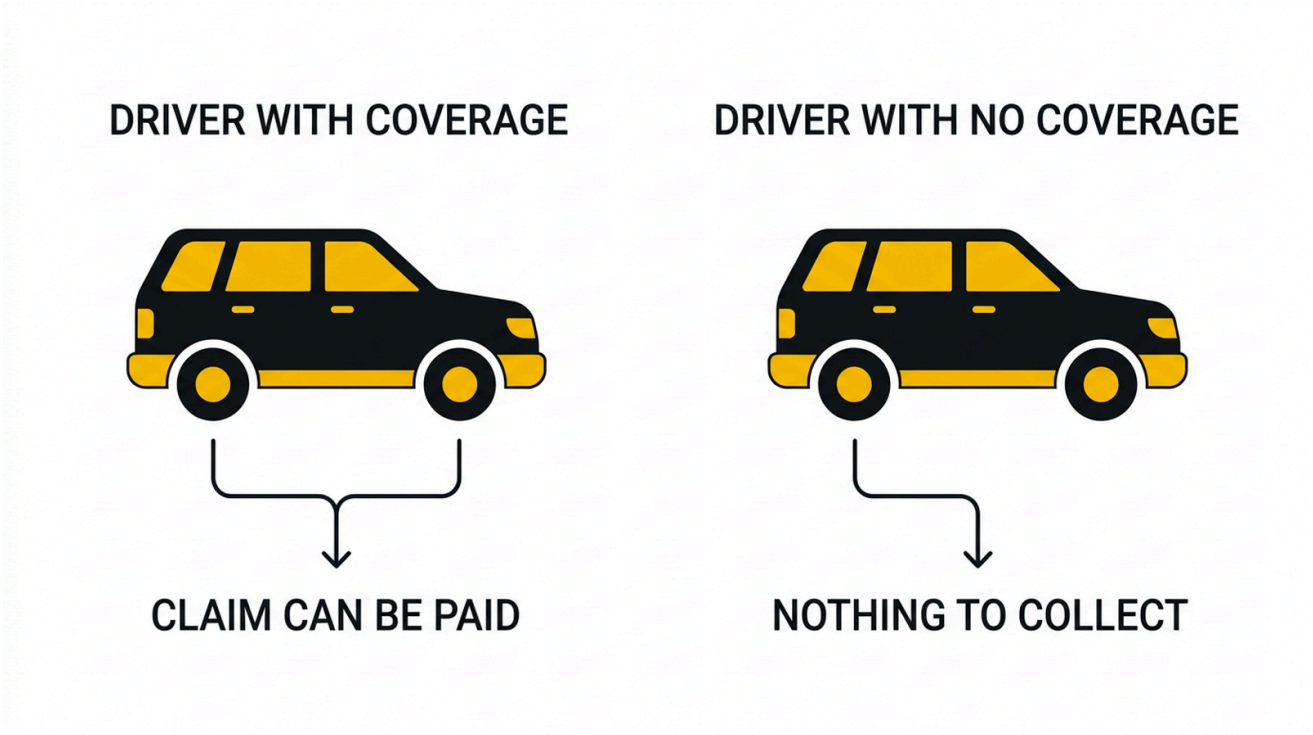
Commercial vehicles and layers of coverage

When a commercial vehicle is involved, there are federal guidelines the company has to follow, and there may be different layers of coverage. The tractor of a tractor-trailer may have coverage. The trailer may have its own. The agency that booked the route for the driver may add another layer. The firm's article on handling Florida insurance after a multi-vehicle accident looks at a related situation.

Local commercial vehicles are different. Florida sets minimum combined bodily injury and property damage liability coverage for commercial vehicles by weight: $50,000 for 26,000 pounds or more but under 35,000, $100,000 for 35,000 pounds or more but under 44,000, and $300,000 for 44,000 pounds or more. A commercial vehicle under 26,000 pounds may carry less. A local truck can cause severe and permanent injuries, and even the minimums may not come close.

How much insurance you should buy

Everyone is in a different situation. Buy enough to protect your assets. If you have a high net worth, you do not want to carry only $10,000 of insurance. In my opinion, you want enough coverage to protect everything you have accumulated over your lifetime.



A driver with coverage can have a claim paid; a driver with no coverage leaves nothing to collect

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Common Questions

Does Florida require bodily injury insurance?

No. Florida does not require it. Bodily injury coverage is elective here, which means a driver who hurts you may have none. That is why your own uninsured motorist coverage matters, because it is the protection you buy for exactly that situation.

What is UM/UIM coverage?

UM and UIM stand for uninsured and underinsured motorist coverage. It is coverage you purchase yourself, on your own vehicle, and it can respond when the driver who caused your crash has no insurance or too little. Without it, a recovery may not be possible.

What if the at-fault driver has no insurance?

You may have very little to collect from. I would say probably 35 to 40 percent of the time we cannot recover anything for our clients. Your own uninsured motorist coverage is the main protection, and PIP still covers part of your medical bills.

How much auto insurance should I carry in Florida?

Enough to protect your assets. If you have a high net worth, do not carry only $10,000 of coverage. Bodily injury coverage protects you from being sued personally if you injure someone, so match your limits to what you have to lose.

Chapter Reflection

Nobody buys insurance to win a claim. You buy it for the day somebody else’s mistake lands on you. Florida asks drivers to decide that without requiring bodily injury coverage, and the gap shows up in the claims that cannot be paid.

05

CHAPTER FIVE

How the Type of Crash Shapes the Injury and the Claim

Not every crash hurts the body the same way. A rear-end collision, a T-bone, and a head-on impact each throw a person's body differently, and the injuries that follow are different too. The claim follows the injury.

This chapter walks through the common crash types I see in Florida, the injuries that go with them, and a doctrine that protects people who were already hurt.

> *"We do have the eggshell plaintiff doctrine in Florida, which basically says that you find a plaintiff as they come. A lot of times our clients have preexisting injuries that now have been aggravated by the crash that they're in. They are entitled to make a claim for the aggravation of their preexisting injury."*
>
> Jonathon Eberst, on people who were hurt before the crash

Rear-end crashes

Rear-end accidents are probably the most common, because nobody is paying attention these days when they drive. People have a phone in their hand. They may be texting, talking, or changing the radio, and then they rear-end the car in front of them.

We see a lot of whiplash-type injuries in rear-end crashes. The momentum and inertia throw a person's body forward and whip the head backward and then forward. That can cause herniations in the discs of the cervical spine and the lumbar spine. Whether you were properly restrained with a seatbelt changes the picture as well.

T-bone crashes

In a T-bone crash, you can be completely strapped in, driving straight down the road, when somebody runs into the side of you. The blunt force lands on your arm and your side. You can break bones, have significant bruising, and suffer internal injuries.

Head-on crashes

A head-on crash on an interstate, where a vehicle comes across the median, is a different level of force. The impact alone can cause severe or fatal internal injuries. Seatbelt placement matters here too, because a lap belt over the belly or around the hips can cause different bruising and internal injuries.

Low impact does not mean low injury

People say, “How could somebody get injured in a low-impact accident?” We often see people suffer significant injuries in low-impact crashes. It depends on the force of the crash and on the person who was hit, and on how that person’s body reacts to the impact.

The eggshell plaintiff

Some clients arrive with an old injury. Maybe it is their back that was already bothering them. If the crash aggravates it, they are entitled to make a claim for the aggravation. The doctrine says you take the plaintiff as you find them.

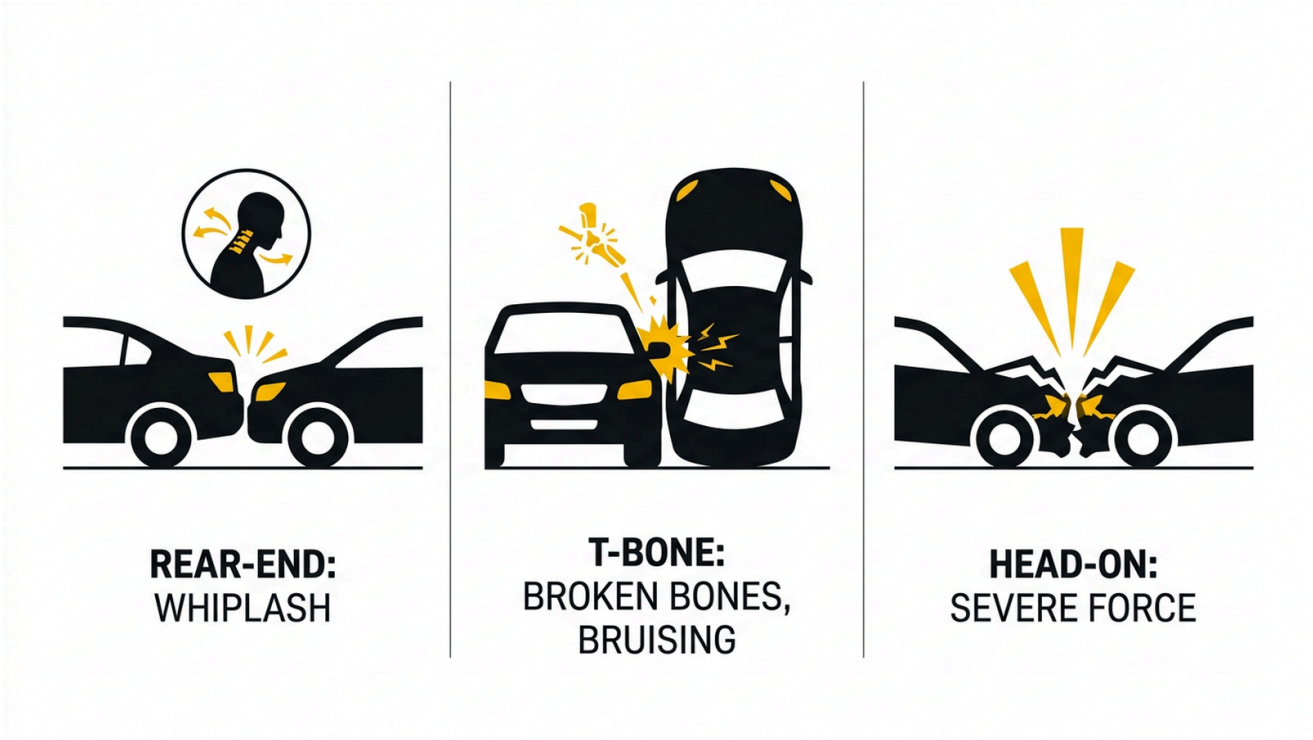
The insurance company will go looking for that old injury, and Chapter 9 explains how. This doctrine is what keeps it from ending a claim by itself. The firm’s Gainesville car accident team handles these claims for clients in North Central Florida.

The injuries I see most often

The most common injuries are to the cervical and lumbar spine, which is your neck and your back. People get herniated discs that press on nerves. That can cause numbness and tingling, and in the worst cases, paralysis. Sometimes you see extremity injuries, injuries from seat-belts, and injuries from airbags deploying.

I am not a doctor, so I do not diagnose. The range runs from very few and minor injuries, depending on force and impact, all the way up to paralysis and even death. That is why medical treatment matters, and it is the subject of Chapter 8.

Florida law limits damages for pain and suffering, mental anguish, and inconvenience in a claim against the at-fault driver. To recover them, the injury must be a significant and permanent loss of an important bodily function, a permanent injury within a reasonable degree of medical probability (other than scarring or disfigurement), significant and permanent scarring or disfigurement, or death. Whether your injury meets that threshold is a question for your doctors and your attorney.



Rear-end crashes, T-bone crashes and head-on crashes and the injuries each tends to cause

Common Questions

Can you get seriously hurt in a low-impact car accident?

Yes. We often see people get significant injuries in low-impact accidents. How badly someone is hurt depends on the force of the crash and on how that person's body reacts to the impact, including any injury they had before. Do not assume a small crash means a small injury.

What injuries are common in a rear-end collision?

Whiplash-type injuries. The momentum throws your body forward and whips your head backward and then forward, which can cause herniated discs in the neck and the lower back. Whether you were wearing a seatbelt and how it sat on your body can change the injuries.

What is the eggshell plaintiff doctrine?

It is a Florida doctrine that says a plaintiff is taken as they are found. If you had an injury before the crash and the crash made it worse, you are entitled to make a claim for the aggravation of that preexisting injury.

Chapter Reflection

A crash is a physics problem before it is a legal one. How the vehicles met decides how a body moved, and how a body moved decides what a doctor finds. A claim that starts from the real mechanics of the crash is harder for an insurance company to talk down.

06

CHAPTER SIX

The Florida Crash Report: What It Does and Does Not Do

The crash report is the first document in almost every Florida car accident claim. Insurance companies read it before they call you. Lawyers read it before they call the insurance company. And it is also one of the most misunderstood pieces of paper in the process.

This chapter covers what is on the report, how the insurance company uses it, what it cannot do in a courtroom, and what to do if it is wrong.

> *"The crash report is the foundation document, if you will, whether it's Martin County Sheriff's, the Alachua County Sheriff, Gainesville Police Department, Volusia County Sheriff, or any other local police department in the state of Florida. The crash report is the starting document for every claim that is made."*
>
> Jonathon Eberst, on the crash report

What is on the report

The report starts with the officer's narrative. After a brief investigation, the responding officer talks to the parties, looks at the evidence at the scene, and writes what happened from the officer's point of view.

You will also see contributing factor codes assigned to each driver. They may show that one driver failed to yield the right of way, drove carelessly, or followed too closely. In effect, the codes allocate fault the way the officer sees it. The report also carries a diagram of vehicle positions, direction of travel, and the approximate point of impact, along with driver statements, witness names and contact details, any citations, and the officer's notes on injuries and who went to the hospital.

How insurance companies use it

The insurance carriers will pull the report and gather any evidence they can from it. The adjuster reads it and decides, inside the office, what percentage of fault each party may carry. The report helps decide which claims get fast-tracked, which get investigated further, and which may be denied at the outset.

The report also gives our firm the insurance information for everyone involved, which lets us open the claims. That includes a claim with your own insurer for PIP, and a claim with your uninsured or underinsured motorist carrier if you have that coverage.

If the report does not make clear who the officer believes was at fault, more of the burden falls on us. We then have to find independent witnesses, get statements, and look for surveillance.

Why the report stays out of the courtroom

Here is the part most people get wrong. Florida keeps a crash report made by a person involved in the crash, and any statement that person gives an officer for the report, out of evidence at trial. It is commonly called the accident report privilege.

The reasoning is that drivers will give honest information to the investigating officer without fear that it will be used against them in court. Florida's crash report statute, section 316.066, creates it.

So the report is a starting point, not a trial exhibit. The information in it, such as witness statements, photographs, and scene measurements, may come in through the Florida Evidence Code and the rules of evidence. In pre-litigation, insurance carriers use the report during negotiations. At trial, we cannot rely on it. Cases get won through admissible evidence anchored to, but not derived from, the crash report.

What the officer can say

The contributing factor codes and the narrative drive the carrier's evaluation before a lawsuit is filed. A citation, if one was issued, may also be used in pre-suit negotiations.

At trial, an officer can be subpoenaed to testify about facts observed at the scene. That includes where the vehicles were when the officer arrived and the physical evidence. What the drivers told the officer for the crash report generally stays out under the accident report privilege. Generally, an officer cannot offer an opinion on who was at fault. Body camera footage can come in too, if it is authenticated properly.

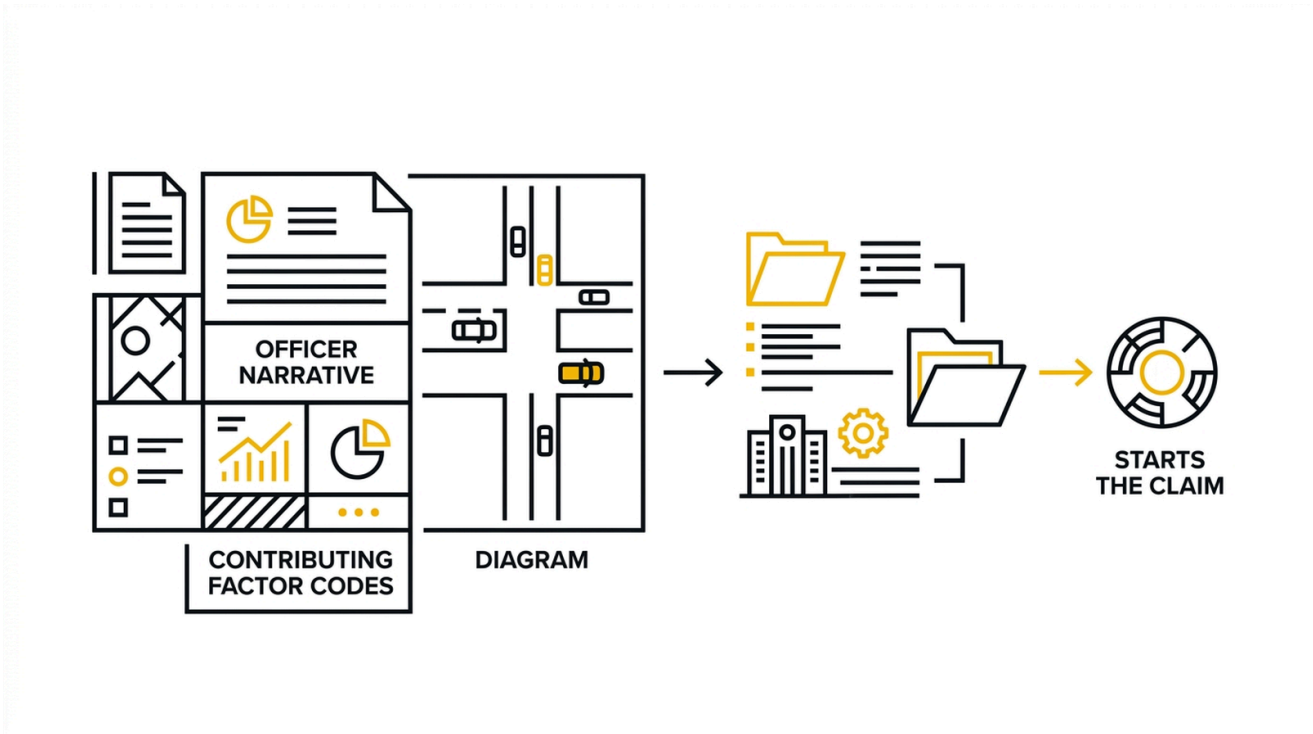
If the officer did not come, or got it wrong

If no officer comes to the scene, you still have reporting duties. A driver in a crash with an injury, a death, or apparent property damage of at least $2,000 must immediately notify the local police, the sheriff, or the Highway Patrol. A driver in a crash that does not require a law enforcement report must submit a written report to the Florida Department of Highway Safety and Motor Vehicles within 10 days.

Florida's crash report portal is where reports are retrieved, with the diagrams and documentation that go with them.

If you notice an error, contact the investigating agency, whether that is the Florida Highway Patrol, the sheriff's office, or the city police department, and request a supplemental report. Send photographs, witness statements, or other documents that show the error. Contributing factor codes can be challenged through the agency's formal correction process. Keep every written request, with the date and the nature of what you asked, to show you tried.

The original report stays in the file even after a correction, so the full context still matters. If you are having trouble, work with your attorney so the correction can be escalated to the right people. The firm's frequently asked questions are a place to start.



The crash report: officer narrative, contributing factor codes and diagram, which start the claim

Common Questions

Can I use the police report in a Florida car accident lawsuit?

Generally no. Florida's accident report privilege keeps a driver's crash report and statements to the officer for that report out of evidence, and we do not rely on the report itself at trial. The witness statements, photographs, and physical evidence behind it may come in through the rules of evidence. The report is where the investigation starts, not where the case is proven.

What do the contributing factor codes mean?

They are the officer's assignment of how each driver contributed to the crash, such as failing to yield the right of way, careless driving, or following too closely. Insurance adjusters use them to form an early view of fault, which is why an incorrect code is worth correcting.

What if the crash report has a mistake?

Contact the agency that wrote it and request a supplemental report. Include photographs, witness statements, and anything else that shows the error. You can also challenge a contributing factor code through the agency's correction process. Keep written requests, because the original report stays in the file.

What if no officer came to the scene?

You still have to report the crash. If anyone was hurt, or the apparent property damage is at least $2,000, notify the local police, the sheriff, or the Highway Patrol right away. Otherwise a written report goes to the state within 10 days. The report gives you documentation for the claim.

Chapter Reflection

A crash report feels official, so people treat it as the last word. It is the first word. It starts the claim, it shapes how an adjuster opens the file, and a driver's report and statements to the officer stay out of evidence. The cases that succeed are built on evidence that can survive without it.

07

CHAPTER SEVEN

Evidence That Wins Claims: Photographs, Witnesses, and Video

Chapter 1 told you what to do in the first minutes. This chapter goes deeper on the three kinds of evidence that carry the most weight in a Florida car accident claim: photographs, witnesses, and video.

Each one has an expiration date. That is the common thread, and it is the reason we move on all three in the first days.

> *"It's important to gather witness statements if there are any independent witnesses to a crash. It's important that you get their names, their phone numbers, and signed brief statements before witnesses leave. Independent observers, unlike parties to the crash, have no interest in the outcome and carry significantly more credibility."*
>
> Jonathon Eberst, on witness statements

Photographs: more than the cars

Capture vehicle damage from multiple angles before the vehicles are moved. Photograph all four sides of every vehicle involved, plus the points of impact. Then photograph the road conditions, the traffic signals, the signage, skid marks, the road surface, the weather, the lighting, and visibility on roads like A1A, US 1, or I-95.

Photograph your injuries before you bandage them. Keep photographing visible injuries as they heal, including bruising and scarring, to show the permanence or disfigurement.

Preserve the original images with all the metadata. A timestamp creates a contemporaneous record that can survive a challenge. Then send the photographs to us within days so we can document the chain of custody: who took them, when, and who has had them since.

Witnesses: why they decide cases

Because a driver's crash report and statements to the officer stay out of evidence, the witness is the person who can put the facts on the record. Independent witnesses are the strongest. In litigation, cross-examination preparation starts with the earliest statements, and the earliest statements are the ones taken at the scene.

Florida has many snowbirds and tourists as witnesses. Out-of-state witnesses can be hard to find weeks later, so lock down contact information on day one. A witness's first account anchors every later piece of evidence that gets built on it.

Video: dashcams, surveillance, and body cameras

Dashcam footage can come from your own vehicle, the at-fault driver's vehicle, or commercial vehicles in the area. Surveillance footage from nearby businesses, gas stations, restaurants, and banks often runs on short retention loops, commonly thirty to sixty days, so you must request it fast. I have seen businesses copy over their footage in as little as twenty days.

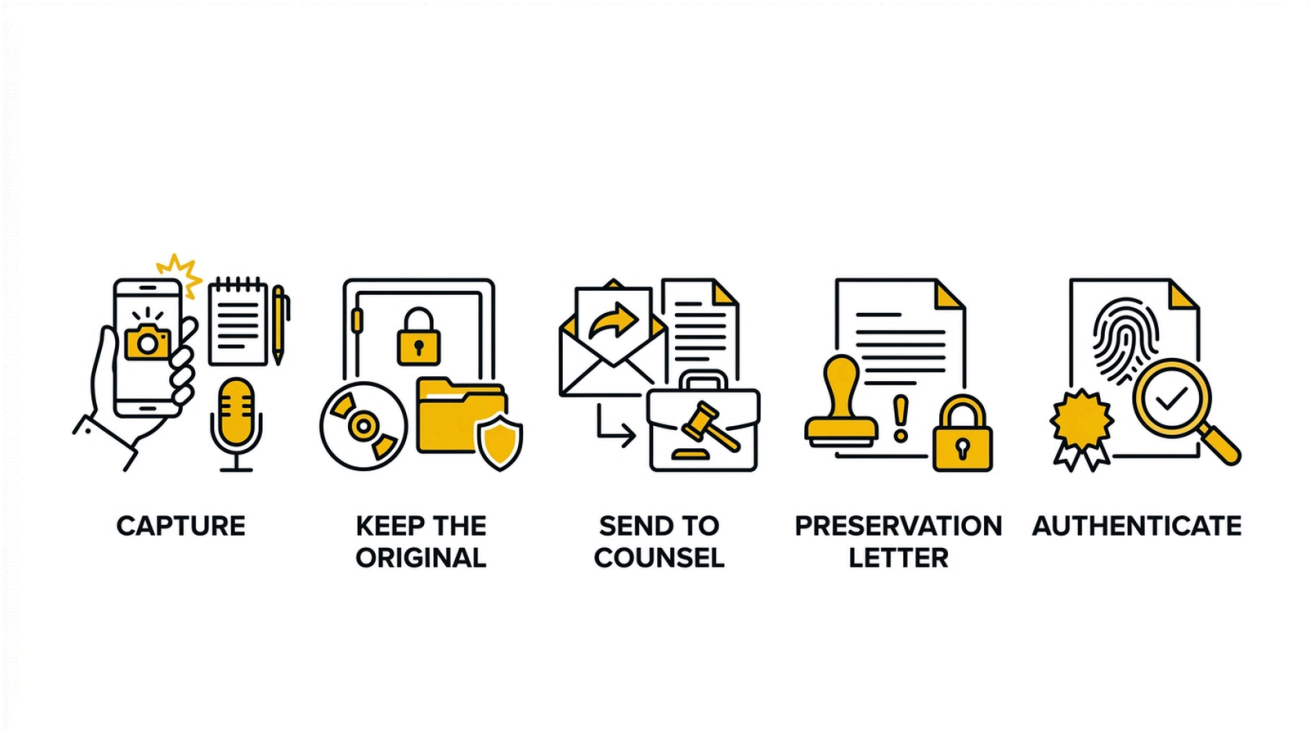
Body camera footage from the responding officer is generally available under Florida public records law.

We generally send preservation letters within days. They go to every business we know of that has surveillance, and to any insurance carrier that may hold footage from the vehicles. The letter asks them to keep the evidence before it is destroyed.

When evidence is lost on purpose or by neglect

If a party had a duty to preserve evidence, such as after a written request, and the evidence was lost, a court can impose spoliation sanctions, including an adverse inference instruction. Whether those remedies reach a business that is not a party to the case is a question for your attorney.

Video also has to be authenticated. In Florida that is done through the Evidence Code, usually with metadata, witness identification, and chain of custody. Florida's authentication rule, section 90.901, is the starting point. Where feasible, preserve the original files with hash verification. That is a technical way of saying the file can be proven unchanged.



Five steps to protect evidence: capture, keep the original, send to counsel, preservation letter, authenticate

Building a claim when you missed the window

Sometimes people call us after the footage has been erased and the witness has gone home. The firm's article on how to build a strong personal injury claim without immediate evidence is a place to start.

Common Questions

What evidence matters most in a Florida car accident claim?

Photographs of the vehicles, the roadway, and your injuries come first. Then independent witness statements, and then video from dashcams, nearby businesses, and officer body cameras. Each can disappear quickly, so collect it early and send it to your attorney within days so the chain of custody is documented.

Why do independent witnesses matter so much?

They have no interest in the outcome, so they carry significantly more credibility than the drivers. Get names, phone numbers, and a signed brief statement before they leave. Cross-examination preparation builds on those earliest statements.

How long is security footage kept?

Surveillance footage from gas stations, restaurants, banks, and other businesses often runs on loops of thirty to sixty days, and I have seen footage copied over in as little as twenty. We send preservation letters within days, asking those businesses to keep the footage before it is destroyed.

What is a preservation letter?

It is a written request that a business or insurance carrier keep evidence, such as video, that they hold. If a party that received the request then fails to preserve the evidence, sanctions can be available, including an adverse inference instruction.

Chapter Reflection

Evidence behaves like perishable goods. Claims are stronger when somebody treats the photograph, the phone number, and the video request as urgent. A lawyer cannot bring back a witness who left town or a camera loop that already ran over itself.

08

CHAPTER EIGHT

Medical Records and Treatment: Why Gaps Help the Insurance Company

Your medical record is the second foundation of every injury case, next to the crash itself. The value of a claim follows what the record shows, and the record follows what you do in the first days.

This chapter covers when to see a doctor, how the insurance company reads a gap in treatment, and what the records have to prove.

> *"So if you're injured, you should see a doctor right away. If you feel the need to take EMS from the scene of the accident to the local hospital, by all means do that. If you're injured and you want to seek treatment, you should do it immediately. Waiting too long could just create a gap and give the insurance company a causation argument for your injuries."*
>
> Jonathon Eberst, on seeing a doctor after a crash

See a doctor right away

If you need EMS from the scene, take it. If you are hurt and want treatment, get it immediately. Chapter 2 gave you one legal reason, the 14-day PIP deadline. This chapter gives the other reason: what a delay does to the claim.

It is important to document your injuries after a crash. Medical treatment is how that happens, and the firm's article on the importance of timely medical treatment after an accident makes a similar point.

The gap and the causation argument

Sometimes a client wants to try at-home therapies first, such as stretching and yoga. They never document the treatment. They try it for three or four months and they are not getting better. Then they decide to go see a doctor.

At that point the at-fault driver's insurance company argues that there is a lack of causation. They argue that the claimant has not seen a doctor or received any medical treatment in three months, four months, or five months. They may point to a fall, sleeping wrong, an injury at the gym, or playing pickleball. The insurance company will do anything it can to point at something else so it does not have to pay.

What the records have to prove

Medical records document each diagnosis, the treatment plan, and the prognosis, and they tie them to the crash. Each diagnosis and injury must be linked through causation to the crash itself. The standard is a reasonable degree of medical probability.

Diagnostic imaging, such as MRIs, CT scans, and X-rays, helps anchor an injury to the mechanism of the crash. They are visual pictures of the injury.

Continuity of treatment

Continuity of treatment is very important. Once you stop treatment, insurance carriers tend to argue that you have healed and need no additional treatment, which limits what they may owe.

As your attorney, we need signed HIPAA authorizations to get your medical treatment, records, and bills related to the crash.

Medical bills and letters of protection

Medical bills document your past medical expenses, which anchor the economic damages we present at trial. A letter of protection is any arrangement under which a medical provider treats a claimant in exchange for a promise of payment from a judgment or settlement. Florida now requires the claimant to disclose the letter and itemized billing as a condition of claiming those medical expenses.

Since House Bill 837, the rules on introducing medical damages, including letters of protection, have tightened.

A bill also has to connect to a diagnosis. Past bills and the projected cost of future treatment are separate pieces, and a life care plan can address the second.



An empty exam room with a clipboard on the table

Common Questions

When should I see a doctor after a car accident in Florida?

Right away. If you feel you need EMS from the scene, take it. If you are injured and want treatment, do it immediately. Waiting creates a gap that gives the insurance company a causation argument, and it can also cost you PIP benefits.

What is a causation argument?

It is the insurance company's claim that your injury did not come from the crash. The longer the time between the crash and your first treatment, the easier it is for them to say something else caused it, such as a fall or an injury at the gym.

Why does it matter if I stop treatment?

Once you stop, insurance carriers tend to argue that you have healed and need nothing more, which limits what they may owe. That is why continuity of treatment is so important.

What is a letter of protection?

It is an arrangement where a medical provider treats a claimant in exchange for a promise of payment from a judgment or settlement. Since House Bill 837, the rules for introducing medical damages, including letters of protection, have tightened, so ask your attorney how it applies to your case.

Chapter Reflection

A gap in treatment is quiet, and the insurance company can point to it later with a simple question: if you were hurt, why did you wait? The best answer is a record with no gap to ask about.

09

CHAPTER NINE

What the Insurance Company Wants From You

After a crash, the at-fault driver's insurance company will call you. The call can come fast, even while you are still at the scene. I want you to understand what that call is for before you answer it.

This chapter covers recorded statements, quick releases, social media, and the tools an insurance company uses to challenge an injury.

> *"Again, you do not have to give one to them. We do not allow our clients to give third-party recorded statements. However, your own auto insurance may be entitled to take your recorded statement, and at that point it is important that you give them the recorded statement because otherwise they could deny coverage on your policy."*
>
> Jonathon Eberst, on recorded statements

Two insurance companies, two different answers

A lot of times the at-fault party's insurance company will ask for a recorded statement. You do not have to give one to them. The firm's article on what not to say to an insurance company after an accident looks at the same subject.

Your own auto insurance is different. Your own company may be entitled to take your recorded statement. At that point it is important that you give it, because otherwise they could deny coverages on your policy.

The quick release

Here is a pattern I see often. The at-fault party's insurance company reaches out and offers $1,000. They send a DocuSign release and say the check will be direct-deposited into your account once it is signed.

People sign. They get $1,000. The next day they are in the hospital with pain that never went away, and the ER visit alone is $10,000. They call us, and by then they have already released the at-fault party. Unfortunately, if the case has been settled and the releases are signed, there is nothing we can do for them at that point.

We have had clients tell us that the other party's insurance company reached out while they were still on the accident scene. If the company can get a release signed for a couple of dollars, the person may have waived their claim for any other money they could have recovered.

Admissions and social media

The common mistakes I see are giving a recorded statement to the at-fault party's insurance company, giving information and admitting fault when the fault was not yours, and posting a lot on social media. Keep your car accident and your injuries to yourself. You should not be posting about them or telling everybody.

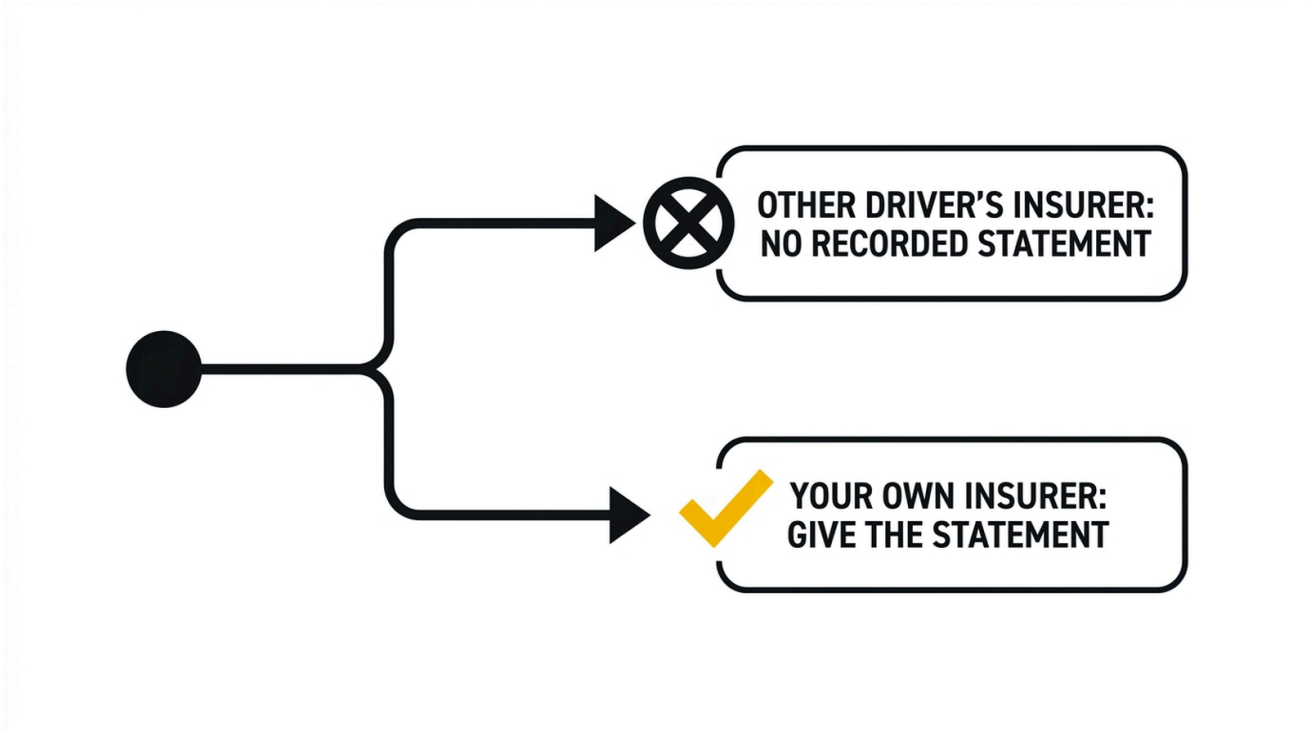
Social media gets watched. Insurance companies look at a claimant's accounts for activity that does not match the claimed injuries or the testimony. They may also hire a private investigator to capture video of a claimant doing something they say they cannot do.

The medical exam the defense orders

In a lawsuit, the defense can ask for a compulsory medical exam, which is also called an independent medical evaluation, and the court allows it when the defense shows good cause. It is an exam by a physician paid by and affiliated with the defense, and that physician may become their expert at trial. Their goal is to challenge the findings in the treatment you underwent.

The search for an old injury

The insurance carrier will usually obtain your full medical history. They want to argue that you have a preexisting condition and that the crash did not cause your injuries. Luckily, Florida has the eggshell plaintiff doctrine from Chapter 5, which says a plaintiff is taken as they are found on the day of the crash. The firm has also published an article on when insurance companies deny valid car accident claims.



The other driver's insurer asks for a recorded statement; your own insurer may be entitled to one.

Common Questions

Do I have to give the other driver's insurance company a recorded statement?

No. You do not have to give a recorded statement to the at-fault party's insurance company, and we do not allow our clients to give third-party recorded statements. Your own insurer is different, and refusing them could lead to denied coverage, so talk to an attorney before you answer either call.

Should I sign a release or settlement check from the insurance company?

Not before talking to an attorney. A release can waive your claim for any other money you might have recovered. I have seen people sign for $1,000, then end up in the hospital the next day with a bill that dwarfs the payment.

Can insurance companies look at my social media?

Yes. They look for activity that is inconsistent with your claimed injuries and your testimony, and they may hire private investigators to film you. Keep your crash and your injuries off social media while your claim is open.

What is a compulsory medical exam?

It is an exam of the claimant by a physician affiliated with the defense, requested in a lawsuit and allowed when the defense shows good cause. The physician may later become the defense's expert at trial. The goal is to challenge the findings of your own treating doctors.

Chapter Reflection

These tools work the same way. A recorded statement, a signed release, a social media post, and a defense exam each give the insurance company something it can use to shrink the claim. Knowing what the call is for is the first protection.

CHAPTER TEN

10

Experts, Reconstruction, and Proving What Happened

When fault is argued or the injuries are severe, a case moves from what people remember to what the physics and the medicine show.

This chapter covers the experts we use, how reconstruction works, what a damaged vehicle can tell us, and what a traffic citation is worth.

> *"Accident reconstruction experts reconstruct the crash from physical evidence, including skid marks, debris pattern, vehicle damage, and roadway geometry. The crash dynamics quantify closing speed, the point of impact, angle of collision, and impact trajectory."*
>
> Jonathon Eberst, on accident reconstruction

The experts in a car accident case

Florida courts currently use the Daubert standard for expert testimony. Florida's expert witness rule, section 90.702, adopted it through the Evidence Code. There is a three-part test. The expert's testimony must rest on sufficient facts or data, be the product of reliable principles and methods, and apply those methods reliably to the facts.

The categories we use most are accident reconstruction experts, biomechanical engineers, treating physicians, neuropsychologists, vocational rehabilitation experts, and life care planners.

An expert has to be prepared to defend the methodology against cross-examination. The defense will challenge the treating physician, bring a counter-expert, and commonly send our client to a compulsory medical exam. Medical experts who give an opinion on permanent impairment commonly use the AMA guides.

How reconstruction works

A reconstructionist works from the physical evidence: skid marks, the debris pattern, the vehicle damage, and the roadway geometry. The crash dynamics quantify closing speed, the point of impact, the angle of collision, and where the vehicles went afterward.

Modern reconstruction uses 3D modeling and FARO scanner data, which can be admissible in some circumstances under the Florida Evidence Code. In an I-95 commercial truck case, reconstructionists may pull data from NHTSA and from electronic logging devices to corroborate the reconstruction.

When an expert reconstructs the accident, the expert anchors the at-fault driver's negligence in the physics of the crash, not in the crash report's contributing factor codes.

A biomechanical engineer then ties the crash forces to the specific injuries sustained, which answers the defense argument that the crash was too minor to hurt anyone.

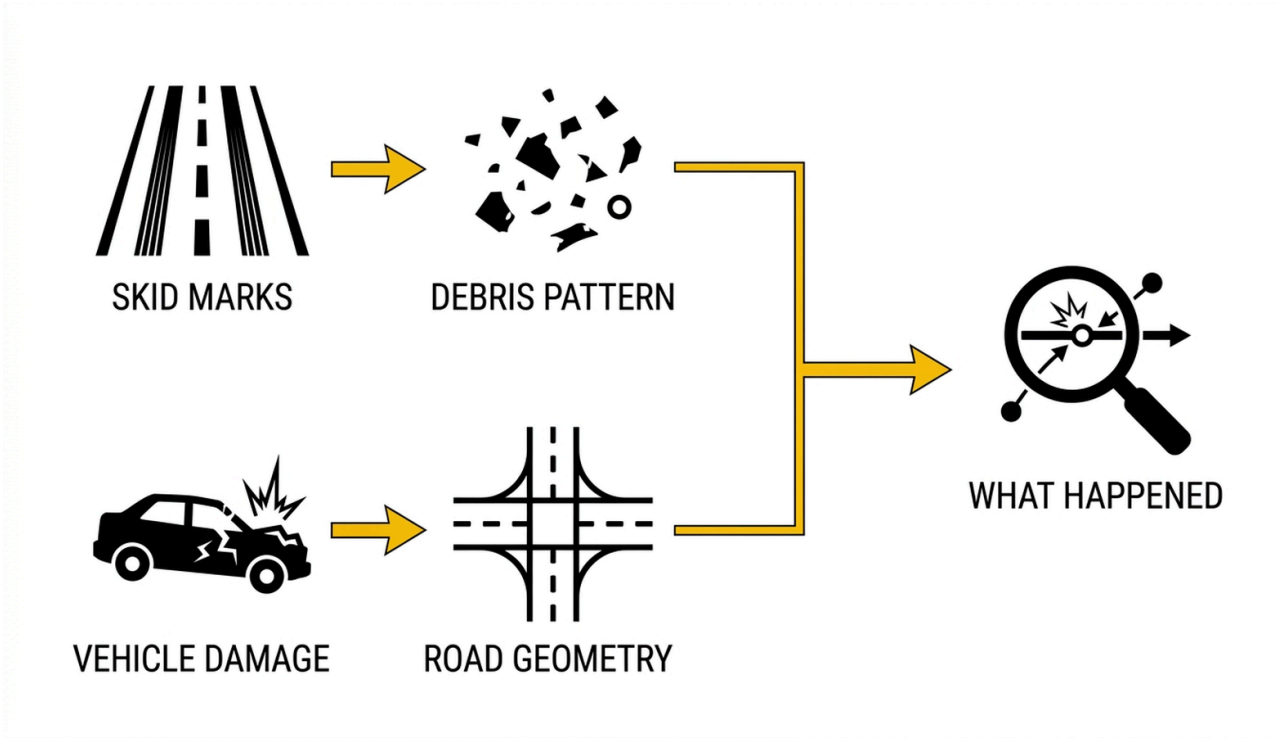
What the damaged vehicle tells you

We inspect a damaged vehicle using crush analysis, which quantifies the energy transfer in the crash. We also match the damage pattern to the mechanism, such as a rear-end, T-bone, or head-on crash. Detailed repair estimates support the property damage claim.

When a vehicle is a total loss, the actual cash value and a diminished value claim may both be available. Photograph all damage before repair, and preserve those photographs before any repair work begins.

What a citation is worth

A traffic citation issued at the scene can carry weight with the insurance company before a lawsuit is filed. At trial, it is different. Florida law keeps the citation itself out of evidence in a civil trial, so what matters are the facts behind it: what the officer saw at the scene, what witnesses saw, and any admission the at-fault driver made to someone other than the officer for the crash report. The common categories are speeding, running a red light, failure to yield, following too closely, and driving under the influence. A DUI charge could potentially open the door to punitive damages in Florida for gross negligence.



Skid marks, debris pattern, vehicle damage and road geometry combine to show what happened

Trucks and the federal rules

Commercial vehicles follow federal guidelines and may carry several layers of coverage, as Chapter 4 explained. The firm's Stuart truck accident page is where the firm describes its truck accident practice.

Common Questions

When does a car accident case need an expert witness?

Typically when a case is headed to trial and who is at fault is disputed. Accident reconstruction experts, biomechanical engineers, treating physicians, neuropsychologists, vocational rehabilitation experts, and life care planners are the ones we use most. Which ones a case needs depends on the dispute.

What is accident reconstruction?

It is rebuilding the crash from physical evidence: skid marks, debris patterns, vehicle damage, and roadway geometry. The expert works out closing speed, point of impact, and angle of collision, and grounds the at-fault driver's negligence in the physics instead of the crash report's codes.

Does a traffic ticket prove the other driver was at fault?

It can help before a lawsuit, because adjusters weigh it when they evaluate fault. At trial, Florida law keeps the citation itself out of evidence, so the case rests on the officer's observations, witness testimony, any admission by the at-fault driver to someone other than the officer for the crash report, and the physical evidence.

Should I photograph my car before it is repaired?

Yes. Photograph all damage and preserve those photographs before any repair work begins. The photographs show the full extent of the damage after the car has been fixed, and they support both the property damage claim and the reconstruction.

Chapter Reflection

An expert does not change what happened. An expert makes what happened visible to twelve people who were not there. The earlier the evidence is preserved, the more the expert has to work with.

CHAPTER ELEVEN

11

From Claim to Settlement: The Steps of a Florida Car Accident Case

A car accident claim has many moving parts, and most people have never seen one from the inside.

This chapter walks through the steps: opening the claim, the adjusters, the demand, a lawsuit if one is needed, and how most cases end.

> *"Often you'll find that the insurance company's initial offer is very, very much a lowball offer. If they can get you to settle your claim for pennies on the dollar, then they will, because it's less money that they have to pay out of their pocket."*
>
> Jonathon Eberst, on early settlement offers

Step one: find the insurance company and open the claim

The first step is to learn the other party's insurance company, so that you can see where and with whom to file a claim. That is usually found on the crash report. Sometimes the responding officer gives you a short form at the scene with everybody's insurance information. Other times you have to wait for the long form, the fully filled-out crash report.

From there, you call the insurance company and set up the claim.

Step two: the adjusters

The company assigns adjusters. If you claim bodily injuries, they will generally assign a bodily injury adjuster, and a property damage adjuster as well. The adjusters work through the file and try to settle the case with you.

That is why I say to contact us right away. Often the first offer is a lowball offer. The firm has also published a list of common mistakes to avoid when filing a car accident lawsuit.

Step three: the demand

In the pre-litigation stage, we commonly send a demand letter once a client has reached maximum medical improvement, which is commonly called MMI. If the insurance carrier has already accepted liability, the demand often helps fast-track the claim.

Insurance adjusters often have only limited settlement authority, so we push them to get more authority if the case demands it.

Step four: a lawsuit, when it is needed

If the insurance company is not treating the client fairly, we prepare to file a lawsuit. Florida's proposal for settlement statute, section 768.79, lets a party make a formal offer to settle for certain terms and an amount. If it is not accepted, it can trigger fee shifting when the judgment comes in at least 25 percent above a plaintiff's offer or at least 25 percent below a defendant's offer.

Once a case is in litigation, discovery includes interrogatories, requests for production, requests for admission, and depositions. Depositions of the at-fault driver, witnesses, treating physicians, and defense medical examiners lock in testimony. We organize the evidence into a matrix that ties it to the elements of negligence and to damages. Expert disclosures are required, with supporting reports.

Insurance companies are also subject to bad faith exposure when a carrier fails to settle a claim within the policy limits when it could have and should have. Since 2023, negligence alone is not bad faith, and an insurer that tenders the lesser of its policy limits or the amount demanded within 90 days of notice of a claim with sufficient supporting evidence is protected from a bad faith action. Claimants and their attorneys also owe a duty of good faith in making demands and setting deadlines.

How most cases end

Currently, approximately 78 percent of our cases settle without the need to file a lawsuit. Florida's time standard for most jury cases is 18 months from service of the lawsuit to final disposition. Mediation is typically ordered by the court before trial. I would say probably 70 percent of cases that get that far settle at mediation, where a neutral third party, usually a retired attorney or retired judge, helps both sides negotiate. Since COVID, we mostly do it over Zoom.

If a case does not resolve, it goes to trial. The insurance company runs a cost-benefit analysis, and when the evidence is strong, its defense costs make settlement more attractive than litigation. That is especially true when the carrier knows we have a dedicated trial team that will try the case.



Five stages of a claim: open the claim, adjusters, demand, lawsuit if needed, settlement or trial

Common Questions

What are the steps of a Florida car accident claim?

You identify the other driver's insurer, usually from the crash report, and open a claim. Adjusters are assigned, and we send a demand once treatment has reached maximum medical improvement. If the insurer will not treat the client fairly, we file a lawsuit, take discovery, mediate, and try the case if it does not resolve.

How long does a car accident lawsuit take in Florida?

Florida's time standard for most jury cases is 18 months from service of the lawsuit to final disposition. During those months depositions are taken and discovery is exchanged, and the court typically orders the case to mediation before trial.

What percentage of car accident cases settle?

Currently, approximately 78 percent of our cases settle without a lawsuit. Of cases that go into litigation, I would say probably 70 percent settle at mediation. The rest move forward to trial, which is why we prepare every case as if it is going to trial.

What is a proposal for settlement?

It is a formal written offer to settle a lawsuit for a specific amount, served on the other side under Florida's offer of judgment statute. The other side has 30 days to accept. If it doesn't, the side that rejects it risks paying the other side's attorney's fees and costs. A defendant who makes an offer can recover them if the judgment is one of no liability or the final judgment comes in at least 25 percent below the offer. A plaintiff who makes a demand can recover them if the final judgment comes in at least 25 percent above it. It is a common tool once a case is in litigation, because it gives the other side a reason to settle.

Chapter Reflection

From the outside, a claim looks like a long wait. From the inside, it is a sequence of steps that starts with the first call to an insurance company and, for most cases, ends before a trial. Knowing the order lets you see where you are.

CHAPTER TWELVE

12

When the Insurance Company Says It Was Your Fault

Sometimes the insurance company does more than offer too little. It says the crash was your fault. It says its driver did nothing wrong and you are not entitled to anything. In some of those cases, another law firm has already told you the same thing.

This chapter covers how a disputed-fault claim works, and two cases that turned around.

> *"This was referred to us by another law firm who was going to turn the case down. So we literally took this from somebody being blamed for a crash to turning it around, to show the truth that they were not at fault for the crash, and they received the justice that they deserved."*
>
> Jonathon Eberst, on a case that other lawyers turned down

A case just outside Gainesville

The at-fault party was denying liability. They said our client was at fault, and they said they had witnesses to prove it. We knew our client was not at fault. She told us how it happened, and we believed her.

We argued with the insurance company, filed a lawsuit, and took the case through litigation. Just before trial, the insurance company went from denying liability and offering nothing to settling for just under a million dollars. Our client had significant neck and back injuries and had surgery.

How you flip a denied-liability case

It is not easy. You take the statements of the parties, and in this case we took the deposition of the driver of the other car. We had some limited video footage.

The opposing party kept saying it had an independent witness who would support its client's side. Every time we tried to get that witness's deposition, the witness never showed up. Without that testimony, it came down to our client's word against theirs. And her word was much more favorable, when you looked at the points of impact on the vehicles and where the crash happened.

A case at a gas station

Another case started in a gas station parking lot. Our client had pulled into the lot behind a commercial vehicle, which started backing up without paying attention and backed into our client. Our client had significant injuries and sought medical treatment.

The commercial vehicle's insurance company denied liability. It said our client had pulled in behind the truck while the truck was already in motion. Another law firm had turned the case down. A prior client referred our client to us, and we said, "We believe your story." We litigated the case and settled it for just shy of seven figures.

Why a weak report does not decide these cases

A crash report does not decide these cases. It may drive the carrier's early valuation, but it does not bind a jury. Strong independent witnesses can override an officer's contributing factor codes. Surveillance and dashcam footage can contradict the report's narrative. Accident reconstructionists can show that a narrative is physically impossible.

When liability is disputed, it generally pushes a case toward trial. In Florida, a jury will allocate fault to the parties involved in a crash. Clear evidence pushes a case toward settlement.

Why some firms will not take these cases

Many law firms do not know how to litigate a case, cannot afford to, or do not want to. They accept whatever the insurance company says. We love to litigate. That is how a denied-liability case gets turned around, and our case results are where you can see more of what the firm has done.



A delivery truck and a car in a lit parking area at night

Common Questions

What if the insurance company says the crash was my fault?

That does not end the claim. In disputed-liability cases, we investigate, gather evidence, and are prepared to litigate. Another firm turning a case down does not mean there is no case. We have turned denied-liability cases around by finding the truth of how the crash happened.

How do you prove the other driver was at fault?

You gather the statements of the parties, take depositions, and look at the points of impact on the vehicles and where the crash happened. Video, independent witnesses, and reconstruction help. In one case, the opposing side's independent witness never showed up to be deposed.

Can a strong case beat a bad police report?

Yes. A crash report does not bind a jury. Strong independent witnesses can override an officer's contributing factor codes, and surveillance footage or reconstruction can contradict the report's narrative. Cases are decided on admissible evidence.

Does a disputed liability case go to trial?

Disputed liability generally pushes a case toward trial, while clear evidence pushes it toward settlement. Many cases still resolve before the trial date, which is why we prepare every case for trial from the start.

Chapter Reflection

Both of these clients were being blamed for a crash by an insurance company. What changed the outcome was not a clever argument. It was a lawyer who believed the client's account and then did the work of proving it.

Frequently Asked Questions

When should I call an attorney after a car accident in Florida?

Right after the accident. We have had clients call us from the accident scene, because most people have never been in a crash and do not know who to call or who will pay for their car. The sooner we are involved, the sooner we can help you document and protect the claim.

How much does it cost to hire a car accident attorney?

There is no fee for a consultation. We work on a contingency fee, which means we do not get paid until we make a recovery for you. You do not have to pay out of pocket to hire us, and you can learn more about the firm before you call.

What are the most common mistakes after a crash?

Giving a recorded statement to the at-fault driver's insurance company, admitting fault when the fault was not yours, and posting about the crash or your injuries on social media. Signing a quick release is another. Each hands the insurance company something it can use against you.

What should I bring or have ready for my first call?

If you do not have anything with you, that is no problem. We just need to hear your story, how the injury occurred and how the crash happened. It helps to have the driver's exchange of information or a police report, but it is not imperative.

Can I recover if the other driver has no insurance?

Sometimes, but often not. I would say probably 35 to 40 percent of the time we cannot recover anything for our clients when the at-fault driver has no coverage. Your own uninsured motorist coverage is the main protection, and PIP still pays part of your medical bills.

Does it matter that Florida is a no-fault state?

Yes, but only for the first part of the claim. No-fault means your own insurance pays your first $10,000 of medical bills at 80 percent and lost wages at 60 percent, regardless of who was at fault. It does not decide who pays for the rest.

Do I need to give a recorded statement to an insurance company?

You do not have to give one to the at-fault party's insurance company. Your own insurance company may be entitled to take your recorded statement, and refusing could let it deny coverage on your policy. Speak with an attorney before you give either one.

What if the insurance company says I caused the crash?

That is a disputed-liability case, and it does not end the claim. We have taken cases other firms turned down and turned them around by finding the truth of what happened. Florida now bars recovery for a driver found more than 50 percent at fault, so the evidence matters. The firm has also published an article on when insurance companies deny valid car accident claims.

Can I have a consultation without coming to the office?

Yes. We offer virtual consultations every day, and since COVID most of our clients prefer them. You can get on the phone with us or on a video call. There is no fee for the consultation. Our Stuart car accident team can start with a call.

Will my case go to trial?

Probably not. Currently, approximately 78 percent of our cases settle without a lawsuit, and many that go into litigation settle at mediation. We still prepare every case as if it will go to trial, because that preparation is what drives the value of the claim higher.

Conclusion

A car accident claim looks different depending on where you stand. From the shoulder of the road, it looks like a mess of phone numbers and photographs. From the insurance company's desk, it looks like a file with a number attached. From a courtroom, it looks like evidence and nothing else.

Every chapter in this book is about moving a claim from the first picture to the third. The scene gives you the raw material. The doctor turns an injury into a record. The insurance company tests whether either one is solid. If a case goes further, the experts and the witnesses carry it into a room where a jury only knows what the evidence shows.

I have tried to be straight about the parts that are hard. Florida law does not require every driver to carry insurance that can pay for an injury. The law changed in 2023 and asks more of an injured driver than it used to. The window for coverage like PIP is short. None of that is a reason to give up, and all of it is a reason to move early.

Here is what I would want any reader to take from this book. Document the scene. See a doctor right away, and keep going until you are told you are finished. Do not give the other driver's insurance company a statement, and do not sign anything before you understand what it waives. If you are not sure where you stand, ask.

The firm has its Stuart headquarters, the Gainesville location, and the Daytona Beach location. If you have been hurt in a crash, contact the firm. The first consultation is free, and we do not get paid until we make a recovery for you.

Final Takeaways

1. Call 911, photograph the scene, and get witness names while they are still there.
2. Your own PIP insurance pays your first medical bills regardless of fault, but you must be treated within 14 days.
3. Since 2023, a driver found more than 50 percent at fault may be barred from recovery, and the deadline to sue is two years.
4. Florida does not require bodily injury coverage, so your own uninsured motorist coverage is the protection you buy for the driver who has none.
5. The type of crash shapes the injury, and an old injury aggravated by a crash is still a claim.
6. The crash report starts the claim, but a driver’s report and statements to the officer stay out of evidence, so the evidence has to stand without it
7. Photographs, independent witnesses, and video all expire, and a preservation letter asks that they be kept.
8. See a doctor right away and stay in treatment, because a gap gives the insurance company a causation argument.
9. You do not have to give the at-fault insurance company a recorded statement, and a quick release can waive your claim.
10. Most cases settle, but every case should be prepared as if it is going to trial, and a denied-liability claim is not a lost one.

Appendix: Sources & Methodology

The sources below are outside authorities cited in the chapters. Jonathon Eberst's own positions are in the chapters themselves.

Statutes & Codified Law

- **Florida Statutes, section 627.736** - the personal injury protection law behind the 14-day rule and the emergency medical condition requirement, Chapter 2. Florida's personal injury protection statute, section 627.736
- **Florida Statutes, section 768.81** - the comparative fault rule that bars recovery above 50 percent fault, Chapter 3. Florida's modified comparative negligence statute
- **Florida Statutes, section 95.11** - the statute of limitations for negligence actions, Chapter 3. Florida's negligence limitation, section 95.11
- **Florida Statutes, section 768.28** - claims against state and local government entities, Chapter 3. Florida's sovereign immunity statute, section 768.28
- **Florida Statutes, section 627.727** - uninsured motorist coverage, Chapter 4. Florida's uninsured motorist statute, section 627.727
- **Florida Statutes, section 316.066** - the crash report privilege and the 10-day written report, Chapter 6. Florida's crash report statute, section 316.066
- **Florida Statutes, section 90.901** - authentication of evidence, Chapter 7. Florida's authentication rule, section 90.901
- **Florida Statutes, section 90.702** - expert testimony, Chapter 10. Florida's expert witness rule, section 90.702
- **Florida Statutes, section 316.650** - traffic citations are not admissible as evidence at trial, Chapter 10. Florida's traffic citation statute, section 316.650
- **Florida Statutes, section 768.79** - proposals for settlement, Chapter 11. Florida's proposal for settlement statute, section 768.79
- **Florida Statutes, section 316.065** - the duty to notify police of a crash, Chapter 6. Florida's crash notice statute, section 316.065
- **Florida Statutes, section 627.737** - the permanence threshold for pain and suffering damages, Chapters 2, 4 and 5. Florida's tort threshold statute, section 627.737

- **Florida Statutes, section 627.7415** - minimum liability coverage for commercial vehicles, Chapter 4. Florida's commercial vehicle insurance statute, section 627.7415
- **Florida Statutes, section 768.0427** - letters of protection and medical damages evidence, Chapter 8. Florida's medical expense evidence statute, section 768.0427
- **Florida Statutes, section 624.155** - bad faith and the 90-day safe harbor, Chapter 11. Florida's bad faith statute, section 624.155

Government & Regulatory Sources

- **Florida Department of Highway Safety and Motor Vehicles** - where crash reports are retrieved, Chapter 6. Florida's crash report portal

Professional Bodies

- **The Florida Bar** - the official member record for Jonathon T. Eberst, About the Author. Florida Bar profile
- **Million Dollar Advocates Forum** - the membership named in About the Author. Million Dollar Advocates Forum

Educational Institutions

- **University of Florida** - the author's undergraduate institution, About the Author. University of Florida
- **Barry University School of Law** - the author's law school, About the Author. Barry University School of Law

Methodology

This book is drawn from recorded conversations with Jonathon Eberst about how Florida car accident claims work. His explanations were edited for print, and statements of law that could be checked were compared against the Florida Statutes. Where this book cites an outside source, it names the source and links to it.

Legal Notice

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