

WATCHING OUT FOR FLORIDA MOTORCYCLISTS

FREEDOM - LIBERTY - JUSTICE



LEGAL RIGHTS OF INJURED BIKERS



Michael B. Brehne, Attorney
David A. Wolf, Attorney

Watching Out for Florida Motorcyclists

Freedom - Liberty - Justice

Legal Rights of Injured Bikers

by Michael B. Brehne, Attorney and David A. Wolf, Attorney

© 2017 by David A. Wolf, Attorney

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, e-mail, or any information storage and retrieval system, without permission in writing from the publisher.

Printed in the United States of America.
For further information please contact:

Michael B. Brehne, Attorney
(407) 645-2195 (Work) 24 / 7
(407) 645-2317 (Fax)
mbrehne@brehnelaw.com

David A. Wolf, Attorney
904-355-8888 (Work)
888-962-4453 (Toll Free)
904-699-8366 (Mobile) 24 / 7
dwolf@woodatter.com

Giving a Voice to Injury Victims and Their Families®



Watching Out for Motorcyclists





DEDICATION

This book is dedicated to the motorcycle injury victims and families who have struggled with the aftermath of personal injuries caused by the negligence of others. While words, legal advice, and compensation cannot erase the trauma or move back the hands of time, it is the authors' goal to give injury victims and families a voice, an ally, and an advocate.



MICHAEL B. BREHNE, ATTORNEY

Michael B. Brehne is a personal injury attorney and the founding partner of the Law Offices of Michael B. Brehne, P.A. based in Altamonte Springs, Florida. He is the creator of 911Bikerlaw.com and 911Autolaw.com.

Mr. Brehne is a law review graduate of Mercer University, Walter F. George School of Law in Macon Georgia. While studying, he also participated in national moot court appellate argument competitions and worked as a law clerk for two federal criminal defense attorneys.



Since graduation, Mr. Brehne has dedicated his 20 year career to representing injured people in motorcycle and car accidents, and represents people when their insurance claims have been denied. He has earned a reputation as a tenacious and skilled trial lawyer when representing his clients against large corporate defendants and insurance companies. He is admitted to practice in all state courts in Florida and the federal courts in the Middle District of Florida.

Michael Brehne has handled thousands of cases related to injuries caused by the negligence of others as well as unfair insurance claim denials. He draws much of his tenacity from his experience as an auxiliary trooper with the Florida Highway Patrol while in college and as a full-time Orlando police officer and detective.

During his tenure with the Florida Highway Patrol and the Orlando Police Department, Mr. Brehne investigated many motor vehicle accidents and understands the complexities of the law, the mechanics of accidents and the fallacies of "eye-witnesses."

When not fighting for his clients, Mr. Brehne spends most of his time with his children and loved ones. When the children are not around, he will enjoy open road time on one of his motorcycles, his favorite being the BMW RT1200. Mr. Brehne has been an avid rider of motorcycles since his early teenage years where he spent summers at "minibike camp" in upstate New Jersey where he would ride each weekday afternoon on trails.

ABOUT THE AUTHORS

As an adult, Mr. Brehne reconnected with his motorcycle past. Only this time, taking to the open roads and participating in and hosting motorcycle events such as at Bike Week in Daytona Beach, Florida as well as many smaller local events. He is a member of the Blue Knights police motorcycle club and is often a guest speaker at club meetings and at local motorcycle club events.

Michael Brehne has used his keen understanding of accident investigation and the law to successfully recover millions of dollars for his clients over the years. Coupled with his keen understanding of the dynamics of motorcycle riding and the hazards faced by motorcyclists each time they ride, it was a logical choice for Mr. Brehne to combine his riding experience with his legal knowledge to represent injured motorcyclists throughout the State of Florida.



DAVID A. WOLF, ATTORNEY

David A. Wolf is a personal injury attorney and a partner in the law firm of Wood, Atter & Wolf, P. A., based in Jacksonville, Florida. He graduated from the University of Florida and is a "Double Gator" with degrees in Finance and Law. He is a member of the Florida Justice Association, the Federal Bar (Middle District of Florida), and the Florida Bar. With over 25 years of experience as a personal injury attorney, Mr. Wolf has devoted his entire career to issues that affect injury victims and their families. He understands that there are many legal, medical, and family related issues that are involved with a case. Because both of his parents worked as public school teachers, Mr. Wolf was raised with life lessons emphasizing the importance of the education and safety of people. Mr. Wolf prides himself on his work ethic in handling his caseload, while devoting time to the most important people in his life – his wife, children, and family.



Mr. Wolf is the author of eleven books and over four thousand articles on a variety of personal injury issues. He has been interviewed and quoted on personal injury matters by several newspapers and Time Magazine. Mr. Wolf has served on the Board of Directors for the Jacksonville Jewish Community Alliance in the positions of Vice President, Treasurer and Secretary. In 2014, he received the prestigious Esther Leah Ritz Emerging JCC Award, which was presented at the JCC Biennial Convention held in San Diego, California. Through the years, Mr. Wolf has been an active volunteer and leader in youth soccer where he has served as a coach, program communicator, team manager, and Secretary on the Board of Directors for Creeks Soccer and as a Special Advisor for the Florida Elite Soccer Accademy. In the community and beyond, Mr. Wolf advocates on many forums for the health, safety, protection, and well-being of children.

Mr. Wolf resides in St. Johns County, Florida with his wife, Robin, and their two children, Megan and Matthew. The Wolf family is committed to education, service, and community. The Wolf household is filled with the love and adventures of their dogs adopted from local animal rescue organizations - Hershey, Godiva, and Boss.

ACKNOWLEDGEMENT

The authors would like to acknowledge the following person for his help with this book:

Book Cover and Design
Carl Krokstedt
CGK Creative
(904) 400-3600
carl@cgkcreative.com

AUTHORS' NOTE

While the authors are members of the Florida Bar, the information provided in this book is not intended to be legal advice, and it is based on general principles, rather than being specific to any given case or legal matter. It is not intended to be used as a substitute for obtaining legal advice or consulting an attorney in the locale in which you reside, or other appropriate jurisdiction. Simply put, this book is a guide for injury victims and their families looking for some general principles and direction in dealing with the aftermath of a motorcycle accident. But it is only a beginning to the legal process, not an end unto itself.





INTRODUCTION 1

FREEDOM, LIBERTY, JUSTICE, AND RISKS FOR MOTORCYCLISTS 5

Bikers, Riders, and Motorcyclists - Freedom, Liberty, and Justice 5

Motorcycle Accident Statistics 6

Common Causes of Motorcycle Accidents 8

Motorcycle Riding Risks 9

LAWS AND RIGHTS OF MOTORCYCLISTS 13

Important Laws to Know for Motorcyclists 13

Motorcyclist Rights - Roadways Laned for Traffic 15

Florida Motorcycle Law and Motorcycle Helmet Defense 16

Texting While Driving - Risks to Motorcyclists and Others 18

MOTORCYCLE LICENSE, TRAINING, AND INSURANCE 21

What are the Requirements to Obtain a Florida Motorcycle License? 21

What Insurance is Required for Motorcycles in the State of Florida? 23

What Insurance is Recommended for an Owner of a Motorcycle? 24

What Motorcycle Insurance Can Be Purchased to Protect the Asset/Investment - The Motorcycle? 25

GENERAL ISSUES AND COMMON QUESTIONS 29

What Should I do if I am in a Florida Motorcycle Accident? 29

What Should I do if I am Injured as a Result of a Motorcycle Accident? 31

Table of Contents

What are the Three Basic Issues in Every Florida Motorcycle Accident Case? 32

Who is Liable for Personal Injuries and Related Damages Caused by a Florida Motorcycle Accident? 34

Why is the Owner of a Motor Vehicle Liable for Personal Injuries Caused by a Florida Motorcycle Accident? 35

Can a Case or Claim Still be Pursued on Behalf of an Injury Victim if a Traffic Citation is not Issued? 36

Can a Case or Claim Still be Pursued on Behalf of an Injury Victim if There is no Police Report? 36

What are the Challenges to Victims Dealing with Personal Injuries Resulting From a Florida Motorcycle Accident?37

What is the Statute of Limitations for a Florida Motorcycle Accident Personal Injury Case? 38

FLORIDA MOTORCYCLE ACCIDENTS RULES OF THE ROAD, NEGLIGENCE, AND RIGHTS OF BIKERS41

Careless and Negligent Driving Cause41

Examples of Careless and Negligent Driving 42

Right of Way Violations 44

Careless Left Hand Turns 45

Improper Lane Changes 47

Head-On Motorcycle Collisions and Accidents 48

Intersection Motorcycle Accidents..... 50

T-Bone Motorcycle Accidents..... 51

Rear End Motorcycle Accidents..... 53



Rear End Shunt Motorcycle Accidents..... 54

Single Motorcycle Accidents..... 55

Losing Control on Turns - Motorcycle Accidents57

Motorcycle Maneuverability Accidents..... 58

Duty to Stop and Yield to Traffic at an Intersection with a Stop Sign 59

Limited Visibility Motorcycle Accidents61

Driving of a Motor Vehicle During Bad Weather / Rain 62

Passing, Turning Lanes, and Right of Way Violations by Other Drivers 62

Heavy Motorcycle Traffic - Local Motorcycle Events and Accidents..... 63

Driving Motor Vehicles Under the Influence - Risks to Motorcyclists 64

Legal Issues, Cases, and Claims Involved in a DUI Accident 65

Hit and Run Motorcycle Accidents..... 68

Challenges and Issues Associated with a Hit and Run Motorcycle Accident 70

MEDICAL TREATMENT AND FOLLOW-UP73

Where Should the Injury Victim Receive Medical Care Following the
Motorcycle Accident?73

Which Documents and Medical Providers Accept Medical Payment Benefits
Under a Motorcycle Insurance Policy? 76

Should the Injury Victim Receive Treatment from a Primary Care Doctor
or Other Health Care Provider Following the Motorcycle Accident?77

Is There a List of Doctors who Treat Motorcycle Accident Injury Victims? 78

Table of Contents

Can a Case Still be Pursued on Behalf of an Injury Victim if There is no Fire Rescue Evaluation or Emergency Room Visit? 79

Can a Case Still be Pursued on Behalf of the Injury Victim if the Police Officer is Told That There Were no Injuries Resulting From the Florida Motorcycle Accident? 79

MOTORCYCLE PROPERTY DAMAGE LEGAL RIGHTS TO COMPENSATION 83

Motorcycle Property Damage - Repairs and Recoverable Damages..... 83

Assessment of Motorcycle Damages
Repairs, Diminished Value and Total Loss Claims 84

Compensation for Damage to a Customized Bike / Motorcycle..... 86

What is a Deductible for Property Damage Claims?..... 87

Can a Biker Collect Pain, Suffering, Mental Anguish Associated with the Damage to the Motorcycle Only? 87

INSURANCE ISSUES AND COMMON QUESTIONS.....91

Does the Injury Victim Need to Report the Motorcycle Accident to his or her Motorcycle Insurance Company or Automobile Insurance Company?91

Should the Injury Victim Give a Statement to the Other Driver’s Insurance Company? 92

Should the Injury Victim Follow the Advice of his or her Automobile/Motorcycle Company Following the Florida Motorcycle Accident? 93

What are the Insurance Sources of Payment for Medical Bills When a Person is Injured in a Florida Motorcycle Accident? 94

What is “Full Coverage” Under a Florida Automobile Insurance Policy? 97

How Does Florida “No-Fault” Automobile Insurance Work with a Motorcycle Accident? 98



How do Medical Bills get paid after a Motorcycle Accident? 99

The Value and Importance of Med Pay (Medical Payment) Coverage..... 99

Who is Responsible for Paying Hospital and ER Bills Resulting From a Florida Motorcycle Accident? 100

Should the Injury Victim Treat Through Health Insurance or Motorcycle Insurance Following a Florida Motorcycle Accident?101

What if There is no Health Insurance or Med Pay Insurance? 102

What are Considered Reasonable and Necessary Medical Expenses Related to a Florida Motorcycle Accident? 103

What is Bodily Injury Insurance? 104

How Does Bodily Injury Insurance Provide Compensation for Motorcycle Accident Injury Victims? 105

What is Uninsured or Underinsured Motorist Insurance Coverage? 106

What Lost Wages Can Be Recovered for the Victim Following a Motorcycle Accident? 107

Should Documents be Signed for an Insurance Company Following a Florida Motorcycle Accident? 108

Should an Injury Victim Sign a Release Sent from the Victim’s Insurance Company or the Other Driver’s Insurance Company? 109

FLORIDA MOTORCYCLE ACCIDENTS - TYPES OF INJURIES..... 111

Motorcycle Accident Personal Injuries 111

Serious Personal Injuries Caused by Motorcycle Accidents..... 112

TYPES OF PERSONAL INJURIES..... 115

Neck and Back Personal Injuries 115

Shoulder Personal Injuries 116

Arm and Wrist Personal Injuries 118

Leg and Ankle Personal Injuries 120

Knee Personal Injuries 121

Laceration and Scar Personal Injuries 122

Traumatic Brain Injuries - Brain Damage 124

Catastrophic Injuries 126

FLORIDA MOTORCYCLE ACCIDENTS: WRONGFUL DEATH 129

Motorcycle Accident Fatalities 129

Fatal Motorcycle Accidents - Florida Wrongful Death Act 130

What is the Florida Wrongful Death Act? How Does it Work? 132

What Factors are Considered in Awarding Damages/Compensation for the Wrongful Death of a Relative in the State of Florida? 133

What are the Legal Rights of Family Members in a Florida Wrongful Death Case? 134

Are There Limitations or Caps to Wrongful Death Cases in the State of Florida? 135

What Types of Insurance Cover Damages for a Wrongful Death Case Resulting From a Florida Motorcycle Accident? 135

SETTLEMENT, COMPENSATION, AND DAMAGES 139

When Should a Personal Injury Lawyer be Hired for an Injury Victim? 139



How Can a Person be Compensated for Injuries and Damages Resulting From a Florida Motorcycle Accident? 140

How Long Should an Injury Victim Treat After a Florida Motorcycle Accident Before a Demand for Compensation is Sent Out to the Insurance Company or Defendant on Behalf of the Injury Victim? 140

What Factors are Considered in a Florida Motorcycle Injury Case for Settlement Purposes? 141

How Long Will it Take to Settle a Personal Injury Case Following a Motorcycle Accident? 143

How Much Money Should a Person Receive for Compensation for Pain and Suffering Resulting from a Personal Injury? 144

Is an Injury Claim or Case Worth More When Caused by the Negligent Driving of an Employee of a Business or Corporation? 145

When Should a Lawsuit be Filed on Behalf of an Injury Victim After a Florida Motorcycle Accident? 146

How Much Should an Injury Victim Sue for in a Personal Injury Lawsuit? 147

Is a Personal Injury Settlement Taxable for Income Tax Purposes? 148

CLOSING 151



INTRODUCTION

“What light is to the eyes - what air is to the lungs - what love is to the heart, . . . liberty is the soul of man.” These insightful words were written by Robert Green Ingersoll, a 19th century American attorney. While these words were written so many years ago, they hold true today especially for men and women with a passion for motorcycles and biking. There is a certain liberty in riding a motorcycle that frees the soul. For some bikers, the occasional ride on the weekend lifts the spirit. For many others, motorcycle ownership is a way of life.

There are all kinds of motorcycles and motorcyclists out on the trails, streets, roads, and highways. Compared to motorcyclists, even the driver of the smallest vehicle has greater protection around him or her. Because of the risk and dangers facing bikers, all motorists should absolutely be on the lookout for motorcycles. Florida law specifically provides that the rights of motorcyclists to be on Florida’s streets are equal in every way to motorists. As such, these rights, freedoms, and liberties should be respected by other motorists. Unfortunately, far too often, a biker and the passenger (otherwise referred to as a back rider, pillion, or person in back) are often injured due to the negligence and carelessness of other drivers.

When a motorcyclist or a passenger suffers personal injuries, it can be quite challenging for the victim and their family. Many motorcycle accidents are life threatening and ultimately life changing for those who survive. For those motorcyclists and riders who die as a result of a motorcycle crash, there is a ripple effect through the family, friends, neighborhood, and community. Many motorcyclists are living quite a full life until the fateful day of the motorcycle crash. It is certainly a sad day when the life of a motorcyclist is ended due to the fault of another driver.



INTRODUCTION

This book titled - **Watching Out for Motorcyclists - Freedom - Liberty - Justice - Legal Rights of the Injured Biker** - was written as a resource for those injured in a motorcycle accident. It is also a helpful resource for the families of injury victims. There are a number of challenges after a motorcycle accident. This book provides helpful information and a general discussion of the laws and challenges that apply to most motorcycle accident claims and cases. When the freedoms, liberties, and rights have been affected by the carelessness or fault of another driver, it is important for the biker and his or her family to be informed, proactive, and protected.

As so aptly said by John Locke (1632-1704), "All mankind . . . Being all equal and independent, no one ought to harm another in his life, liberty, or possessions." As such, there should be justice, remedies, and compensation for injured bikers.



Watching Out for Motorcyclists





FREEDOM, LIBERTY, JUSTICE, AND RISKS FOR MOTORCYCLISTS

BIKERS, RIDERS AND MOTORCYCLES - FREEDOM, LIBERTY, AND JUSTICE

In Florida and other states, there are patriotic and hardworking people of each community that are committed to the full time pursuit or weekend passion of riding motorcycles. Motorcyclists come from all walks of life. Bikers are young, old, and middle aged. Owning and riding a motorcycle is not defined by class, ability, or education. It is one of the few pursuits without any of these restrictions. Bikers often share a love for country, freedom, liberty, and, yes, justice.

As residents and visitors to the State of Florida, it is important that an injured motorcyclist seek and obtain justice when the motorcyclist is injured as a result of the negligence or fault of others. Contrary to some beliefs, motorcyclists do not in any form or fashion assume the risks of injury due to the carelessness, recklessness, or fault of other drivers on the roads, streets, and highways. It is not a defense in a motorcycle case that the motorcyclist would not have been so severely injured if the motorcyclist was driving a motor vehicle or commercial vehicle. Those opposing the rights of motorcyclists to share the road could just as easily argue that the motorcyclist would not have been injured if the motorcyclist stayed at home or was taking a leisurely ride on a spaceship. As odd and ridiculous as these arguments sound, the arguments are unfairly made by many people, especially those employed in the insurance industry.

Let's make it clear. Injured motorcyclists and riders have a right to compensation when they suffer injuries as a result of the fault of another driver, or even the fault of another biker depending on the circumstances. It should be noted that a motorcyclist

does have the responsibility to follow the rules of the road and otherwise operate his or her motorcycle in a reasonable and safe manner.

Let's make something else clear. A motorcyclist's right to compensation is not considered absolute by the insurance industry. In other words, insurance companies typically will not roll out the red carpet and will not automatically compensate an injured motorcyclist a fair, reasonable, or just settlement of the injury claim. Medical bills and medical records must be submitted and the severity and permanency of the injuries must be established in order for a motorcyclist to obtain a settlement before trial or a verdict at trial that is commensurate with the personal injuries suffered.

When a motorcyclist is harmed in an accident, the resulting injuries can have a devastating impact on the work and personal responsibilities of the motorcyclist. The motorcyclist is often challenged and stressed by lost wages, loss of ability to earn money, job insecurity and job loss, pain, suffering, medical bills, and a host of other problems. Again, bikers love to ride and their passion spreads to work, family, country, and doing their share to contribute to community. In the aftermath of an accident, the motorcyclist's whole world is turned upside down.

As noted by William Harley co-founder of Harley Davidson Motorcycles, "Life offers few guarantees, but generally the harder and longer you work, the more likely you are to succeed." It is interesting to note that the motorcycle community and its members take this to heart every day and show support of this way of life, both by word, and by action.

MOTORCYCLE ACCIDENT STATISTICS

According to NHTSA (National Highway Transportation Safety Administration), motorcyclists statistically are more likely to die from a crash than if they were in a typical motor vehicle accident. NHTSA estimated that a death from a motorcycle accident occurred twenty seven (27) times more frequently than deaths resulting of a driver or passenger in another type of vehicle. This figure was calculated in part by using a per mile traveled statistic. Whatever the statistics, it is clear that the operation and use of a motorcycle can be quite dangerous; however, it should be noted that the ownership and use of a motorcycle is a choice that we, as Americans, make in the spirit of freedom and liberty which many motorcyclists greatly treasure, respect, and honor.

A review of 10 years of statistics with NHTSA shows a range of 4,000 to 6,000 deaths every year as a result of a motorcycle accident. Many of these deaths could have been

avoided with slower speeds, less distracted driving, less impaired driving, and other factors that affect motor skills and cognitive skills during the operation of a motor vehicle or motorcycle.

The leading states for motorcycle rider fatalities are Florida, California, and Texas. Motorcycles are popular and plentiful in each of these states because the states have weather that allows for riding year round. In addition, each state is quite large geographically and have large population centers and traffic congestion. These factors, and others, contribute to the higher number of deaths for motorcycle riders as compared to other states.

Unfortunately, the statistics are quite alarming when analyzing alcohol use and deaths resulting from motorcycle accidents. It is estimated that approximately 30% of the motorcycle fatalities involved an impaired biker with a BAC (Blood Alcohol Level) of .08 or higher for the motorcyclist.

With respect to personal injuries, the national estimate for the number of motorcycle riders and passengers injured is somewhere in the range of 80,000 to 100,000 people per year. The statistics show that motorcycle drivers account for a majority of those injured as compared to passengers on motorcycles. That is because most accidents involve a motorcycle rider without a passenger.

The statistics are also interesting as to the type of crash. While a large percentage of motor vehicle (car) accidents involve a rear end crash, over 70% of motorcycle accidents involving a car or truck involve a front end collision, whereas only 5 percent or so were caused by a rear end collision.

Due to the risks and dangers to motorcyclists and their riders, other motorists on the road should watch out for motorcycles. A motorcycle is no match (size, volume, weight, or force) to passenger vehicles in a collision. Certainly, a heavy truck or commercial vehicle could crush a motorcycle in certain accidents. A passenger vehicle can also do the same. Safer driving can help bring down some of these chilling statistics.

When a person is injured or dies in a motorcycle accident, the truth is that the statistics are a bit irrelevant. From a legal and claim standpoint, the only facts that matter are the ones particular to the case or incident at hand. If a motorcyclist or passenger is injured as a result of the negligence or carelessness of others, a claim or case should be pursued to protect and enforce the legal rights of the personal injury victim and family.

COMMON CAUSES OF MOTORCYCLE ACCIDENTS

While there are a number of common causes for motorcycle accidents in the State of Florida and elsewhere, each case or claim should be evaluated on its own fact, merits, and circumstances. Here are some common causes for motorcycle accidents:

HEAD-ON MOTORCYCLE COLLISION

A large percentage of wrongful death motorcycle accidents involve head on collisions. When a motor vehicle crashes head on with a motorcycle, the resulting impact and injuries can be, and often are, quite devastating. Many head on collision crashes can be avoided with safer driving, slower speeds, and less distractions.

IMPROPER LEFT TURN INTO THE PATH (RIGHT OF WAY) OF A MOTORCYCLIST

In the State of Florida as well as other states, a motorist attempting a left hand turn shall yield the right of way to oncoming traffic. This is especially important when a driver is attempting a left hand turn when a biker is approaching from the other direction. When two motor vehicle drivers are in a similar situation and there is a "close call," but no impact between the vehicles, there may not be any injuries sustained when one car swerves to avoid the other. This can be quite different for a biker who may avoid the direct impact with the left hand turning vehicle, but may nonetheless suffer serious personal injuries as a result of losing control of the motorcycle, laying down the motorcycle to avoid the crash, and / or being ejected from the motorcycle. In a case like that, the biker may very well be entitled to compensation from the left turning offender.

MOTORIST RUNS RED LIGHT OR STOP SIGN (INTERSECTION COLLISION)

Another common cause or type of motorcycle accident involves a motorist who runs a red light or stop sign at an intersection. Bikers and other motorists have the right to expect that others on the road will abide by the traffic control devices and traffic regulations. Like other forms of motorcycle accidents, any time there is a collision or near collision between a motorcycle and a motor vehicle - the personal injuries can be quite devastating and life altering for the biker and passenger on the motorcycle.

MOTORIST ATTEMPTS DANGEROUS AND IMPROPER LANE CHANGE

Many motorcycle accidents take place because the driver of a motor vehicle is not paying attention to the road and traffic conditions. There are also a number of driver distractions that impede the driving skills of even the most adept drivers and certainly worsen those of poor drivers. When a driver attempts a lane change, the driver should check his surroundings, forward and in the rear to make sure it is safe and reasonable



to attempt the lane change. Unfortunately, many motorists fail to see motorcycles on the road and then attempt a lane change causing a crash or near crash. This results in personal injury to the biker who is otherwise safely operating the motorcycle.

MOTORCYCLIST / BIKER LANE SPLITTING

It should be noted that while motorcyclists are generally and genuinely good, law abiding, patriotic and loyal citizens - some motorcycle accidents are the fault in whole or part of the biker. Lane splitting can lead to an automobile v. motorcycle accident. Lane splitting is not permitted in Florida as of this edition of the book. Lane splitting occurs when a biker rides between and ahead of two lanes of slow or stopped traffic. Because there is not a lot of space to operate the motorcycle between lanes, and because motorists may not be aware that a motorcycle is approaching while automobile traffic is stopped, motorcycle crashes do take place. Of course, these crashes can be avoided with more patience on the part of the biker and by using crash avoidance techniques on behalf of the biker.

SPEEDING

Like other types of automobile accidents and trucking accidents, many motorcycle accidents result from excessive and unsafe speeds by a motorist, a biker, or both. Posted speed limits should be followed. Furthermore, it is imperative for motorists and bikers alike to adjust and slow speeds for heavy traffic, construction, weather, and any time that children and other pedestrians / bicyclists are crossing the street or near the street.

COMPARATIVE FAULT

It should be noted that Florida is a comparative fault state. In other words, liability or fault can be apportioned to more than one person. For instance, let's say that a motorist attempts a left hand turn in front of an oncoming motorcyclist. There is a crash that results in personal injuries to the motorcyclist. If it is ultimately shown that the motorcyclist was speeding excessively at time of the crash, then some of the fault for the crash may end up being apportioned to the motorcyclist.

MOTORCYCLE RIDING RISKS

Certainly, there is a great amount of joy, fun, and utility that go into motorcycle ownership and ridership. For many, the motorcycle is the main form of transportation for a variety of economic reasons such as cost savings, low gas consumption, and



convenience. While there are many positives that go into motorcycle ownership and operation, there are also riding risks to deal with on a daily basis. While many motorcycle riders are quite skilled and very careful on each ride, there are too many other drivers on the road who do not pay such great attention to the posted speed limit and violate the rules on the road far too often. Here are 7 common motorcycle riding risks that a rider may contend with on any given ride

1 - Drivers Turning Left

Most reported motorcycle accidents involve a front end collision. Many of these particular accidents begin with a driver making an improper or an unsafe left hand turn into the right of way of the motorcyclist.

2 - Abrupt Stops by Other Drivers

Many drivers panic while driving in traffic or near motorcycles. For some reason, panic sets in and there is an abrupt and sudden stop. When a motorcyclist has to then abruptly stop, this can be quite dangerous since approximately 70% of the braking power is located on the front brake of a motorcycle. As such, an abrupt sudden stop can result in the ejection of the motorcyclist over the front of the motorcycle in certain situations.

3 - Gravel and Other Debris on the Roadway

Unlike most passenger and commercial motor vehicles, small objects in the road like roadkill or debris can be quite dangerous to a motorcyclist. Gravel on a roadway can cause the tires of the motorcycle to lose grip and cause the motorcycle to act in an unpredictable and sometimes uncontrollable manner.

4 - Drivers Changing Lanes

A simple lane change by a driver into the right of way or path of a motorcyclist can have catastrophic consequences. Even if there is no impact between the motor vehicle and motorcycle, there can still be an accident or crash that causes serious injuries to the motorcyclist. Whenever a driver is attempting a lane change, due care should be taken to make sure that the lane change can be done in a safe manner. This is especially important when there is a motorcyclist in the destination lane of travel for the driver of the motor vehicle.

5 - Bad Weather - Wet Roads, Icy Roads, Wind, and Rain

Any time that there is bad or inclement weather, a motorcyclist is put at risk during a ride. Both the motorcyclist and the bike itself are exposed to the elements which makes the control and operation of the motorcycle that much more difficult.



6 - Drivers Following Too Closely

On any given day, there always seems to be those drivers who are in a hurry and filled with impatient thoughts and actions. There are also far too many distracted drivers talking on the phone or texting these days. Due to these and other factors, drivers will tend to follow too closely and cause rear end accidents. Even a low speed rear end accident can cause serious permanent injuries to a motorcyclist.

7 - Intersections

Another common dangerous area to motorcycles is the intersection. Other drivers tend to turn into the motorcyclist's right of way. In addition, many drivers just fail to see or notice a motorcycle as he or she proceeds through an intersection. Most people obey stop signs and traffic signals; however, many do not. These actions and more put the motorcyclists at risk for a crash and for personal injuries.



LAWS AND RIGHTS OF MOTORCYCLISTS

IMPORTANT LAWS TO KNOW FOR MOTORCYCLISTS

When a motorcyclist is injured as a result of a Florida Motorcycle Accident, it is helpful to know the general laws that are in place that apply to motorcycle ownership, ridership, licensure, and insurance. In fact, it is even better for the motorcyclist to have some knowledge of the Florida law before owning or riding a motorcycle. Either way, in the aftermath of a Florida Motorcycle accident, the motorcyclist, passenger, and family of the injury victims should seek out a personal injury attorney for advice, consultation, and legal representation. The motorcycle laws in Florida are in some respects unique to Florida. Other states may have some similar laws in the books, but not the same exact law as Florida.

Florida Motorcycle License

To operate a motorcycle in the State of Florida, a motorcyclist must be duly licensed. In order to obtain a license to operate a motorcycle, the motorcyclist must take a motorcycle safety course in compliance with the Florida Motorcycle Safety Education Program. The approved course must be at least 12 hours in length and must include at least 6 hours of actual motorcycle instruction.

Florida Motorcycle Registration and Insurance

To register a motorcycle in the State of Florida, motorcycle insurance is not required. As such, a motorcyclist can, under certain circumstances, operate a motorcycle in the State of Florida without any insurance at all. If a motorcyclist decides to operate a motorcycle without insurance, there are risks involved. If the motorcyclist receives

certain traffic citations and / or is in an accident that is the fault of the motorcyclist, the motorcyclist will be at risk for license revocation, unless and until certain motorcycle coverage is purchased.

Florida Motorcycle Helmet Requirements and Restrictions

All motorcycle riders under 21 years of age must wear a helmet. If a motorcyclist is 21 years of age and older and chooses not to wear a DOT approved helmet, the motorcyclist must prove that he or she has at least \$10,000 in medical insurance that could pay for their injuries to be in compliance with the law. Again, Florida has its own laws in place as to motorcycle ownership and coverage.

Florida Motorcycle Cases: No PIP and No Permanency

Unlike injury victims occupying motor vehicles like passenger cars in the State of Florida, an injured motorcyclist or rider is not required to carry Personal Injury Protection (PIP) insurance. As such, medical bills can be collected from the at-fault driver's insurance carrier since there is no PIP for the biker available to pay for the same. The reimbursement or compensation for medical bills still must typically wait for the entire case to settle. Furthermore, there is no requirement for a biker to show he or she suffered a permanent injury in order to seek damages for pain, suffering, loss of enjoyment of life, and mental anguish as a driver or passenger of a car would.

Florida Motorcycle Operation

As for the operation of a motorcycle, this is governed by Section 316.208 (1) - Motorcycles and Mopeds - which provides as follows:

Any person operating a motorcycle or moped shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application.

These and other topics will be more fully covered in this book. To know the law is one thing, to pursue a case or claim on behalf of an injured motorcyclist is quite another endeavor. When a motorcyclist has been injured as a result of the negligence of another driver, the injured motorcyclist should seek out the help from a Florida Motorcycle Accident Attorney.

MOTORCYCLIST RIGHTS - ROADWAYS LANED FOR TRAFFIC

Section 316.209, Florida Statutes - Operating Motorcycles on Roadways Laned for Traffic, establishes the rights of motorcyclists in the State of Florida. It provides as follows:

316.209 Operating motorcycles on roadways laned for traffic.–

(1) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) do not apply to police officers or firefighters in the performance of their official duties.

(6) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

The Florida Legislature correctly recognized the rights of motorcyclists to have full use of a lane as cars and trucks do. Furthermore, the aforementioned statute requires that other drivers shall not deprive the motorcyclist of such use of Florida's roads, highways, and streets. Some people do not like the presence of motorcycles on the roadways. Some feel uncomfortable with a motorcycle near other traffic. The law does not recognize the uneasiness of other drivers around motorcycles. Florida law certainly recognizes the rights, freedoms, and liberties of motorcyclists; however, the rights of motorcyclists are also governed by reasonableness, responsibility, and safety.

As mentioned previously, Florida has adopted a comparative fault set of laws. As such, the fault or liability for a motorcycle accident can be apportioned among two or more people. For instance, let's say that a motorcyclist is speeding through an intersection. Another driver coming from the opposite direction makes a negligent left hand turn into the right of way

of the motorcyclist and there is a crash. Under these facts, there may be an apportionment of fault between the motorcyclist and the driver. If the case went to a jury trial, the jury may assess fault against each person. A jury may determine that the driver was 75% at-fault and the motorcyclist was 25% at-fault. Under this fact scenario, the jury would still award the full damages to the motorcyclist, but the judge would reduce the verdict by the comparative fault at the conclusion of the trial. For instance, if the jury awarded \$100,000, this verdict would be reduced by 25%, which represents the comparative fault of the motorcyclist. As such, the net verdict on these basic facts would be \$75,000 to the biker.

It should also be noted that each case or claim should be evaluated on its own facts and merits. Like people, each case or claim is unique and should be treated that way.

FLORIDA MOTORCYCLE HELMET LAW AND MOTORCYCLE HELMET DEFENSE

The requirements for the use or wearing of a motorcycle helmet are governed by Section 316.211, Florida Statutes which provides as follows:

316.211 Equipment for motorcycle and moped riders. –

(1) A person may not operate or ride upon a motorcycle unless the person is properly wearing protective headgear securely fastened upon his or her head which complies with Federal Motorcycle Vehicle Safety Standard 218 promulgated by the United States Department of Transportation. The Department of Highway Safety and Motor Vehicles shall adopt this standard by agency rule.

(b) Notwithstanding subsection (1), a person over 21 years of age may operate or ride upon a motorcycle without wearing protective headgear securely fastened upon his or her head if such person is covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle.

Over the years, the requirements for the wearing of a motorcycle helmet have changed. Currently, a motorcycle rider can be exempt - for purposes of the aforementioned statute - from wearing a motorcycle helmet if the person is over 21 and is covered by an insurance policy that provides for at least \$10,000 in medical benefits if the person is injured in a motorcycle accident. If these requirements are met, there is no further requirement by statute to wear a motorcycle helmet. However, there can still be an

argument in a personal injury case that a motorcyclist who fails to wear a helmet is negligent or careless for not doing so. The aforementioned statute does not contain any language one way or the other that prevents a defendant, company, or insurance company from arguing that the failure to wear a helmet constitutes negligence. As such, it would appear that the motorcycle helmet defense is still a viable defense in the State of Florida; however, the elements of the defense must be established.

There must, however, be a causal connection between the failure to wear a helmet and the injury received from the collision. Rex Utilities v. Gaddy, 413 So. 2d 1232 (Fla. 3rd DCA 1982), is a case that interpreted and applied the language of Section 316.211, Florida Statutes before there was a "medical benefits" escape clause to the requirement of wearing a helmet. Nonetheless, it appears that this case is still good law as it applies to how the motorcycle defense must be established to serve as a potential defense in a civil case involving injury to a motorcyclist. In essence, the court in this case ruled that the failure to wear a motorcycle helmet was not relevant or admissible since the defense failed to prove that the failure to wear a helmet was the proximate cause of the injuries sustained by the motorcyclist.

Here is an example that will help further explain the ruling of the Court. Let's say that John Smith, a motorcyclist, is rear ended at a traffic light by another motor vehicle. John Smith carried the requisite \$10,000 in "medical benefits" coverage and, as such, elected not to wear a motorcycle helmet. As a result of the crash, John Smith suffered a broken leg and no other injuries. John Smith did not suffer, nor did John Smith claim that he suffered a head injury. In this particular example, the fact that John Smith was not wearing a helmet is wholly irrelevant to the case at hand. As such, it is likely that a court would exclude any mention of the failure of John Smith to wear a helmet. The analysis would be different if John Smith suffered a head injury that could have been prevented or significantly lessened by wearing a helmet. Under this fact pattern, there would need to be expert testimony to connect the failing to wear a helmet with the injuries suffered by the motorcyclist.

As you can see, the requirements and defenses associated with wearing a helmet can be quite confusing and challenging. As such, it is typically helpful to secure advice, guidance, and legal representation from a Florida Motorcycle Accident Attorney. Certainly a motorcyclist has the freedom and liberty to choose not to wear a helmet, but this decision may impact the value of the biker's personal injury case.

TEXTING WHILE DRIVING - RISKS TO MOTORCYCLISTS AND OTHERS

There is a well-known and documented danger in every motoring community. "Texting While Driving," can and does, cause serious motorcycle accidents and related serious injuries. While the phones themselves may be "smart", the use of smartphones such as iPhones, Android phones, and other devices while driving, is not so smart. In fact, it is downright dangerous to text, read, scan, and otherwise use a mobile phone while driving. Most states including the State of Florida have banned the act of texting while driving.

It should be noted that these laws apply to more than just the specific act of texting while driving. For instance, let's say that there is an interesting news article pulled up on a mobile phone or tablet. If the driver then takes the time to "read" the article, this can be a violation of the applicable Florida Statute. Furthermore, and more importantly, the simple act of reading a news story on a mobile device can result in a serious motorcycle accident that results in lifelong injuries and even the wrongful death of the motorcyclist. As noted by the popular campaign, "Look Twice for Motorcycles," it is important for all drivers to be aware of their surroundings, traffic, weather, and yes the presence of law abiding motorcyclists on the road. Distracted driving in the form of typing or reading on a mobile device creates unnecessary danger to a motorcyclist who is otherwise following the rules of the road and obeying traffic regulations.

Motorcyclists are particularly at risk in distracted driving situations by other drivers due to the smaller size and vulnerability of the motorcyclist. Let's face it - a motorcycle is no physical match for the typical passenger vehicle. The situation is even more problematic when a commercial vehicle is involved.

The Florida law on point is referenced as the Florida Ban on Texting While Driving Law. Section 316.305, Florida Statutes provides as follows:

316.305 Wireless communications devices; prohibition.—

(1) This section may be cited as the "Florida Ban on Texting While Driving Law."

(2) It is the intent of the Legislature to:

(a) Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.

(b) Prevent crashes related to the act of text messaging while driving a motor vehicle.

(c) Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.

(d) Authorize law enforcement officers to stop motor vehicles and issue citations as a secondary offense to persons who are texting while driving.

(3)(a) A person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of non-voice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging. As used in this section, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

As clearly spelled out in this statute, a violation of the Florida Ban on Texting While Driving Law may be the result of typing, sending, or reading data from a mobile device. According to the National Safety Council, distracted drivers including those using mobile devices for phone calls, texting, social media, and other pursuits can miss seeing up to 50 percent of what surrounds them including pedestrians, traffic control devices, other motor vehicles, and, yes, motorcycles.

If a motorcyclist is injured by a distracted driver who is texting while driving or otherwise unlawfully or negligently using or viewing a mobile device, there certainly can and should be a claim or case pursued against the careless driver of the vehicle. While distracted driving and other careless acts is unacceptable and can help establish the fault of the driver, it is just one piece of the larger puzzle that comprises of an injury case or claim. It should be noted that a personal injury case is not automatically won just because it is established that the driver was texting while driving.

Following a motorcycle accident, there are many issues and challenges that face the motorcyclist and the family. It is at these challenging times that a Florida Motorcycle Accident Attorney for advice, guidance, and legal representation.



MOTORCYCLE LICENSE, TRAINING, AND INSURANCE

WHAT ARE THE REQUIREMENTS TO OBTAIN A FLORIDA MOTORCYCLE LICENSE?

Before we look at a Florida motorcycle endorsement, we need to know how Florida defines a motorcycle. According to statutes, a motorcycle means, "A motor vehicle powered by a motor with a displacement of more than 50 cc's, having a seat or saddle for the use of the rider, and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or moped." In contrast, a "motor vehicle" means, "Any self-propelled vehicle including a motor vehicle combination, not operated upon rails or roadway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles." This simply means that a motorcycle has two or three wheels and is not a scooter or moped having an engine 50 cc's or smaller and is not a car, truck, bus etc. It also means that a motor vehicle is not a motorcycle but is a car, truck, bus, etc. A motor vehicle, however, is not a motorcycle, scooter or moped either.

Florida statutes require a written and riding skill examination prior to receiving a motorcycle endorsement. An exception would be if the applicant has already received a motorcycle license or endorsement from another state (except Alabama), Canada or the armed services. The Department of Highway Safety and Motor Vehicles certifies examiners and examination locations throughout the state and through various organizations.

The Florida Rider Training Program consists of written tests and skill tests which are standard throughout the state and are designed to test the applicant's knowledge of the

operation of a motorcycle and of any traffic laws specifically relating to motorcycles. The key ingredient to receiving a motorcycle endorsement in Florida is the actual demonstration of the rider's ability to exercise ordinary and reasonable control in the operation of a motorcycle. This is usually done in a large parking lot that is coned off and carefully measured to mimic standard road conditions and road hazards.

The most common exercises that must be taught and learned are, acceleration with controlled braking; negotiating turns and curves; driving over road hazards such as wooden planks; narrow turning and collision avoidance. Most often, instructors will teach a four hour classroom block of introduction to the use and operation of a motorcycle and the specific laws that apply to them. The course would continue outdoors on actual motorcycles where the student would be expected to learn the basic operations of the motorcycle including shifting gears, breaking, using horns and lights, and proper safety inspection and maintenance. Many students have never straddled a motorcycle, yet alone driven one. These classes are as beginner basic as they come. But for as simple as the course work is, it can actually get you riding on the second day!

While it may seem elementary, students are taught how to check tire pressure and add air, check oil levels, fuel levels if there are no gauges, check chain tightness and lubrication, brake power and the operation of warning lights such as headlights, turn signals and brake lights. They are also educated on safe riding equipment such as steel toed boots with above the ankle support, long pants, rider safety jackets with shoulder, elbow, back and forearm protectors, and of course helmets and eye protection.

The first day of field exercises is the most important day of the training because it allows the rider to become comfortable on the motorcycle and confident that they can tackle the exercises for the next day's examination. Most often, riders will use motorcycles provided by the certified training facility because they do not own their own. Most motorcycles used for training are smaller, lighter weight, and have smaller engine displacement for ease of maneuverability. In any given class, most students will drop the motorcycle at least once. But, no need to worry, they teach you how to effectively pick up a fallen motorcycle without straining your back and without causing further damage to the motorcycle.

On the third day, students are permitted to practice the exercises they were taught the day before for several hours and then the skill test begins. The instructors, who were extremely helpful, supportive, and entertaining, magically transform themselves into state certified license examiners and become "all business." They are no longer permitted to offer instruction on technique. But rather, they are there to document

your performance on the learned exercises and to ascribe a numerical grade which will determine whether you pass or fail the license test.

Florida has standard courses that include the Basic Rider Course (BRC) or Basic Rider Course updated (BRCu). Other courses include Three Wheel Basic Rider Course (3WBRC) or the Sidecar/Trike Education Program (S/TEP) for endorsement. No person under the age of 16 is permitted to ride or be licensed to ride motorcycles, mopeds, motor driven cycles, motorized scooters or electric helper motor bicycles on the roads streets or highways of Florida.

Once you receive your certificate of completion, simply present it to any county's authorized DHSMV licensing bureau to receive your motorcycle endorsement which will be shown on the front of your new Florida driver's license. There are two types of endorsements for motorcycles. The first is a "Motorcycle Only" license which does not permit the rider to operate a motor vehicle, only motorcycles. The second is a "Motorcycle Also" endorsement which includes the basic operator's license or CDL license and allows the license holder to ride motorcycles. It is a crime in the state of Florida to operate a motorcycle without the proper endorsement.

WHAT INSURANCE IS REQUIRED FOR MOTORCYCLES IN THE STATE OF FLORIDA?

This question is often asked and the simple answer is . . . None! In general, Florida does not require any insurance to ride a motorcycle. Is this a good thing or a bad thing for the rider? It probably is a bad thing. The reason is that, most people will not buy things unless they have to or want to. Who wants to spend more money on insurance than we already do? Premiums in Florida are already too high and most insurance companies are very stingy when it comes to paying out claims. Have you heard the term "penny wise and pound foolish?" This term best explains how you should approach motorcycle insurance in Florida.

Before getting into the types of insurance that are available to motorcyclists in Florida, it is important to note that in order for a 21-year-old and older to ride a motorcycle without a helmet, the rider must have proof of health insurance or medical payment insurance that would cover the rider for medical expenses related to a motorcycle accident.

Having health insurance through your employer, the government exchange, or an individual policy should suffice for proof of insurance to satisfy the helmet law.

If a rider does not have health insurance, the rider can purchase medical payment insurance from most major insurance carriers to pay the medical bills associated with motorcycle accident injuries. The law requires a minimum of \$10,000 of medical payment coverage in order to ride helmet free.

Medical payment coverage works very similarly to the Florida Personal Injury Protection, otherwise known as PIP, insurance that is required in order to register / own a motor vehicle in the State of Florida. Since 1973, Florida initiated a law to ensure that injured motorists received swift and prompt payment for accident related injuries regardless of fault. This law became known as the Florida No-Fault Insurance law. Under the statute, motorists are required to purchase Personal Injury Protection coverage (PIP) and carry a minimum of \$10,000 coverage for medical and related expenses.

Some carriers allow motorists to purchase additional coverage above \$10,000. Motorists can purchase supplemental coverage called Medical Payment (Med Pay) coverage to pay for any deductibles associated with the PIP coverage or non-covered expenses beyond the \$10,000. The carriers that offer Med Pay coverage for automobiles often offer the same to motorcyclists. Being that the average hospital bill for a motorcyclist injured in Florida can exceed \$30,000-\$50,000, many attorneys and insurance agents recommend buying as much medical payment insurance that you can reasonably afford.

If you have health insurance, it still makes good sense to purchase Medical Payment coverage for your motorcycle to pay for out-of-pocket expenses such as prescriptions, copayments and deductibles.

WHAT INSURANCE IS RECOMMENDED FOR AN OWNER OF A MOTORCYCLE?

When purchasing or owning a motorcycle, it is important to discuss your coverage needs, goals, and financial means as to insurance coverage with an experienced insurance agent. Certainly, there are many qualified customer support insurance representatives in place these days; however, it is best to have a discussion with a local agent one-to-one to make sure that you have the right insurance in place. The time to figure out what insurance you have in place or needs in place is prior to any prospective accident or incident. Once an accident or incident takes place, it is too late to add insurance or change insurance to provide coverage OR additional coverage the damages and losses associated with the accident or incident.

WHAT MOTORCYCLE INSURANCE CAN BE PURCHASED TO PROTECT THE ASSET/INVESTMENT - THE MOTORCYCLE?

Let's now discuss protecting your investment. Our motorcycles are more than a mode of transportation for most of us. They are an expression of ourselves and our personality and reflect our individuality. For most of us, it represents a significant financial investment. The purchase price alone of many motorcycles can constitute the third most valuable personal item we have after our homes and cars. Because of this, it would be wise to purchase insurance to protect our investment.

As previously stated, motorcycle insurance is not required in the State of Florida. The only required insurance for a motorcycle is usually at the behest of finance companies that seek to protect their security interest in your motorcycle. Finance companies require proof of insurance for damage or loss of the motorcycle before financing the purchase. Often, the finance companies request owners to update their insurance information during the life of the loan. If the owner does not supply proof of adequate insurance for the motorcycle, most finance companies will purchase insurance for the motorcycle and add the premium to your outstanding loan.

What insurance should you purchase to protect your investment? Property damage insurance is the type of insurance that would pay you for loss or damage to your motorcycle. There are two types of property damage insurance that protects you in the event of a loss to your motorcycle. A loss to your motorcycle can be by accident, theft, vandalism or negligence. We are all familiar with accidents that cause damage to motorcycles. These can occur when a motorcycle comes in contact with a car or another motorcycle while riding. Accidents also occur when a motorcyclist collides with a non-moving object or simply runs off the road.

When damage to your motorcycle occurs as a result of an accident, the "Collision" coverage portion of your insurance policy will provide protection. Coverage for Collision usually refers to your motorcycle striking an object while being ridden. Collision coverage will pay for the monetary loss of the value of the bike or the value to repair it. Fair market value is defined as what a willing buyer would pay to a willing seller neither of whom is under a compulsion to buy or sell. The best determination of fair market value can be by researching recent sales in your geographic area and listings of motorcycles for sale that match yours. Cycle Trader.com would be a great place to start to determine the fair market value of your motorcycle. Either way, the maximum payment for this type of coverage will only be the fair market value of the damaged motorcycle moments before the accident. In other words, the value of the

MOTORCYCLE LICENSE, TRAINING, AND INSURANCE

motorcycle just before the accident is the maximum you would receive. If the bike can be repaired and that cost does not exceed the fair market value of the motorcycle then it would be repaired under this coverage.

What if your motorcycle was not damaged in an accident? What if you drop it in your driveway? What if something falls on it? What if it catches fire? What if it is stolen? If any of these events occur or any other event that causes damage to your motorcycle, the Comprehensive insurance portion of a policy would cover these types of losses. Comprehensive insurance, simply stated, would cover losses to your motorcycle in the same way and manner as Collision insurance if the damage occurs not as a result of an accident. I.e., if the motorcycle was not being driven. The value limitations regarding fair market value would also apply under this coverage.

Watching Out for Motorcyclists





GENERAL ISSUES AND COMMON QUESTIONS

WHAT SHOULD I DO IF I AM IN A FLORIDA MOTORCYCLE ACCIDENT?

Motorcycle accidents run a broad spectrum from minor accidents to significant ones in which a motorcyclist suffers severe injuries and even dies as a result of the crash. Like shoes, there is no one size fits all approach to the handling of the challenges in the aftermath of a motorcycle accident. However, there are some general tips or recommendations that apply to most situations. It should be noted that the best and safest approach to take is to contact and hire a Florida Motorcycle Accident Attorney as soon as possible to get guidance, advice, and legal representation in place. Of course, the medical needs of the injured motorcyclist should take priority over everything else. Here are some things to keep in mind as the injured motorcyclist or the family of the injured motorist dealing with the aftermath of a motorcycle accident.

Call the Police. That's right. Make sure that the police come to the scene of the crash to take statements, draw diagrams, interview the other driver, interview witnesses, assess the property damage, obtain automobile insurance information, document the roadways and road conditions, and issue a citation to the at-fault driver.

Call Fire Rescue. If the injured motorcyclist needs immediate medical attention, get fire rescue to the scene to perform an evaluation and transport the motorcyclist if needed to a local emergency room.

Go to the Emergency Room or Get Medical Care ASAP. If a motorcyclist is feeling any pain following a crash or just feels somewhat different, the motorcyclist should seek medical care at an Emergency Room or through a qualified medical provider in the community. It is best to have an examination that reveals no significant

injury than to not discover a latent injury that worsens over time because of a lack of initial treatment.

Take Photographs of the Vehicle and Roadway. If it is safe to do so, take photographs of the respective vehicles and any visible damage to fixed objects like guardrails. Also, take photographs of any skid marks and debris (if any) on the roadway. It is also helpful to have photographs of the viewpoint of the motorcyclist and the viewpoint of the other driver as each approached the point of impact. Photographs of applicable road signs, traffic signals, and landmarks may also be helpful.

Take Photographs of Physical Injuries. Physical and visible injuries suffered as a result of a motorcycle accident help illustrate the force of the impact of the body of the motorcyclist. Over time, bruises, lacerations, and related injuries may fade or heal. As such, it is important to document these injuries from the beginning. Have friends or family members photo document your stay at the hospital and your recovery at home. Photograph your wound dressings and the injury site beneath them. Photograph any accommodations that had to be made to your home such as toilet seats, shower benches or special beds or chairs that are now required. Take the pictures every few days to show healing or deterioration. These photographs are priceless in front of a jury.

Do Not Give Statements to the Insurance Companies. This section applies to an act to refrain from, rather than an act to do, following a motorcycle accident. At some point in time, the motorcyclist will be required to provide a statement to his or her own insurance company to cooperate per the terms of the policy; however, it is best to give this statement only after being prepared by an experienced attorney and in the presence of his or her attorney hired to handle the motorcycle accident case.

Most times, the request for a statement comes from the at-fault driver's insurance company trying to find inconsistencies in your statement so they can deny their driver's liability. Do not, under any circumstances, speak to the at-fault driver's insurance company without consulting an attorney. Many bikers think that it is obvious that the accident was not their fault and nobody in the world could dispute that. Well, insurance companies make billions of dollars thinking just that. It's not their driver's fault and they do not have to pay your claim. Don't fall into their trap and consult a Florida motorcycle accident attorney after an accident.

Stay Off of Facebook. Here is another act to refrain from. In our age of ongoing 24/7 social media, many people post on Facebook to keep family members and friends informed of both good things and not so good things. Insurance companies, upon the

report of the accident, will commonly search through Facebook to see if there are any posts related to the crash and to see if there are any posts that may be used against the motorcyclist in the future. Rarely, if ever, are Facebook and other social media used to bolster or support an injury case. Stay Off of Facebook, at least refrain from posting anything that may relate to the crash or do anything directly or indirectly to affect the pursuit of the case or claim.

Get Follow-Up Medical Care. If there is an emergency room visit, the services provided by the emergency room are short-term and limited in nature. Follow-up care should be obtained following either a short-term emergency room visit or a more involved hospitalization.

Contact an Experienced Motorcycle Accident Attorney. Even in the first few hours or days following a motorcycle accident, actions and statements may be given that may end up harming the case or claim. As such, it is often best to get an attorney in place to help you navigate through the challenges and obstacles that present themselves in the aftermath of a motorcycle accident.

WHAT SHOULD I DO IF I AM INJURED AS A RESULT OF A MOTORCYCLE ACCIDENT?

When a person suffers serious personal injuries in a motorcycle accident caused by the negligence of a motorist or other driver, there are many challenges faced by both the injury victim and the family. First and foremost, the medical needs of the injury victim should be met. The medical care may involve fire rescue paramedics, emergency room personnel, orthopedists, neurologists, surgeons, therapists, and other medical professionals. Once the initial medical needs of the patient are met, the injury victim and family are often faced with the issue of how to pay for their follow-up care. Soon after an accident, an injury victim is often contacted by investigators, insurance adjusters, and others seeking information regarding the accident.

At these most challenging times, it is often helpful to have the advice, consultation, and representation of a Florida Motorcycle Accident Attorney. An experienced attorney in personal injury cases can advise the victim and family as to issues including medical bills, medical treatment, insurance coverage, insurance claims, legal rights, compensation, damages, potential crashworthiness or product defect claims, and other issues that may present themselves. These legal claims/legal cases are handled on a contingency fee basis. This means that the attorney will accept a portion of the settlement if one is achieved. If the attorney cannot settle the case, the attorney will

not be paid anything except for costs associated with the investigation of the claim if possible.

The Florida Bar regulates the amount an attorney can charge for motorcycle accident cases. The Florida Bar allows an attorney, in most cases, to accept 33 1/3% of the recovery prior to filing a lawsuit and 40% after filing a lawsuit. The percentages lower as the recovery increases into the millions. Because the attorney does not charge any money "up-front," injury victims are able to secure the services of a qualified Florida Motorcycle Accident Attorney without having to pay the attorney for the investigation or representation until and if they win.

No other profession provides their services without payment if they are not successful. Imagine your accountant refunding your fee if you do not get money back from the IRS at the end of the year. Or imagine your doctor refunding your fee if the medicine he prescribed did not work. It just doesn't happen in any other profession. Injured bikers are fortunate there are attorneys like the authors who would dedicate their time and money and effort to win your case with no risk to you.

Soon after a crash takes place, the insurance carriers, investigators, managers, supervisors, risk managers, insurance adjusters, and attorneys are put into action to advise, defend, and to protect the interests of the at-fault driver. Because of this, you should have your team of advocate attorneys and support staff in place to advise you and to ensure the protection of your legal rights.

WHAT ARE THE THREE BASIC ISSUES IN EVERY FLORIDA MOTORCYCLE ACCIDENT CASE?

There are three basic issues in every Florida Motorcycle Accident case:

1. Liability. This refers to the part of the case involving fault. The State of Florida has adopted a comparative fault set of laws. In other words, the attorney for the injury victim does not have to prove that 100% of the fault was attributed to a particular driver. Even if the victim is partially at-fault, a case/claim for personal injuries can still be pursued. In determining the liability, fault, and/or responsibility for a particular accident or incident, the investigation may include the review of the police report and accident scene. If there were witnesses to the accident, statements can be taken as well, and physical evidence from the scene and/or from the vehicles can be useful in reconstructing an accident in order to help determine fault.

While it is helpful if the police officer issues a traffic citation to the alleged at-fault driver, the issuance of a traffic citation is not required in Florida to pursue a claim for personal injuries. In fact, the issuing of a citation is inadmissible in courtroom proceedings. Many victims complain that the officer did not issue the at-fault driver a citation without realizing it has no direct bearing on their case. The issue of liability in motorcycle accident cases can be quite confusing and complicated, so it is often helpful to hire a Florida Motorcycle Accident Attorney to review the facts and details of the accident.

2. Damages. This typically refers to injuries sustained by the victim as a result of the motorcycle accident. The value of the case is usually contingent upon the extent or seriousness of the injuries. Factors that may be considered include the following: length of the medical treatment, type of medical treatment, diagnostic test results, permanency of the injuries, the manner in which the victim's life has been affected or disrupted, the need for future care, the need or performance of surgery, the extent of scarring, extent of disfigurement, and other factors. The one time emergency room visit is valued much differently than a case involving a year of treatment by many specialists.

Simply stated, the more documentation you have of your injury and the more treatment that you receive for the injury, the better able the insurance company is to evaluate the value of your case. Without treatment documentation, the insurance company is likely to believe that you were not seriously hurt and thus, the value of your case is slight. However, if there is overwhelming evidence and documentation of an injury such as MRI films, x-ray films and CT scan results, they are often hard-pressed to deny the existence of a serious injury. Therefore, it is in your best interest to follow your doctor's instructions and have the appropriate diagnostic tests and treatment that are beneficial to heal from your injury. Without it, the insurance company is likely to pay very little for your injury claim.

3. Automobile/Motorcycle/Liability Insurance. If liability can be established and the damages or injuries warrant the pursuit of a legal case, then practical considerations must be evaluated. One major practical consideration involves the availability and amount of automobile liability insurance coverage and/or the ability of the at-fault party to satisfy a judgment.

While there are laws in place in the State of Florida that require an owner of a vehicle to maintain automobile insurance, the basic or minimal requirements are often insufficient to properly compensate the injury victim. Because of this, it is important to determine the amounts and types of insurance coverage that are in your policy and the at-fault

driver's policy for a particular injury or accident. The vehicle owner, driver, and/or business /company owner may have also purchased a policy in excess of the minimal requirements, so all potential policies of insurance coverage should be explored to determine if they provide coverage for a given accident. A Florida Motorcycle Accident Attorney can help review the available insurance and advise the injury victim as to the practicalities of a particular claim or case.

WHO IS LIABLE FOR PERSONAL INJURIES AND RELATED DAMAGES CAUSED BY A FLORIDA MOTORCYCLE ACCIDENT?

The at-fault driver is legally responsible for the damages of the injury victim. In addition to the at-fault driver, the owner of the vehicle is liable to the injury victim in states that adopt the concept of the Dangerous Instrumentality Law. Under Florida law, the operation of an automobile or truck is considered the use of a dangerous instrumentality. Therefore, under the laws of the State of Florida, both the driver and the owner of the vehicle (even if the owner the vehicle was not present at the time of the automobile accident) are liable for the personal injuries and related damages. In addition to the owner and the driver the vehicle, an insurance company may be responsible for payment of the damages related to a motorcycle accident. Furthermore, the company employing the driver, and the motor carriers involved in hiring and/or in dispatching of the driver may also be liable.

The insurance company of the at-fault driver/at-fault owner cannot typically be sued directly for the accident related damages; however, the insurance company will be responsible to pay any settlement or judgment within the insurance policy limits. On the other hand, the Uninsured or Underinsured Motorist insurance company of the biker or the passenger can be sued directly for the accident related damages under certain circumstances.

Automobile insurance laws and liability laws can be quite confusing and complicated. It is important to consult with a Florida Motorcycle Accident Attorney regarding issues related to liability (fault), damages, and insurance coverage. In addition to the owner of the vehicle and the driver, a company or business that employs a person acting within the course and scope of the employment can also be held liable for the injury victim's damages and losses.

In summary, there can be several persons or entities liable for the damages sustained by an injury victim when there is a motorcycle accident. Depending on the facts and circumstances, and generally speaking, the following may be liable for the injuries

sustained by the accident victim: at-fault driver, at-fault owner, employer of at-fault driver, at-fault driver's automobile insurance company, at-fault owner's automobile insurance company, Uninsured/Underinsured Motorist insurance company for the biker and passenger, and the Uninsured/Underinsured Motorist insurance company for the motorcycle owned by the injury victim or a resident relative.

WHY IS THE OWNER OF A MOTOR VEHICLE LIABLE FOR PERSONAL INJURIES CAUSED BY A FLORIDA MOTORCYCLE ACCIDENT?

In the State of Florida, both the at-fault driver and the owner of the vehicle are legally liable for personal injuries caused by the negligence of the driver in a motorcycle accident. Even if the owner was not present at the accident or in the vehicle at the time of the accident, the owner of the vehicle driven by a negligent driver is still legally liable for personal injuries and related damages because Florida has adopted the Dangerous Instrumentality Law for Motorcycle Accidents. This is referred to as "vicarious liability."

Some believe that the Dangerous Instrumentality Law is not fair; however, in many states like Florida, a motor vehicle is considered a dangerous instrumentality. That means the state recognizes that serious injury or death can occur if the motor vehicle is used in a negligent, careless or reckless manner. In order to impress the seriousness and high degree of responsibility an owner has to control his dangerous instrumentality, Florida law states that the owner of the vehicle who allows another person to drive the vehicle is legally responsible for the driver's negligence or fault.

When a person is injured in a motorcycle accident, there are often issues involving automobile insurance, medical bills, medical treatment, medical specialists, past medical treatment, future medical treatment, pain and suffering, and other matters. These issues will be discussed in other parts of the book.

As you can see from the discussion above, there may be more than one person or party liable when there is a motorcycle accident. The liability of any particular party will depend on a number of factors, including but not limited to the assessment of fault for the accident and the applicable insurance policies in place. Because multiple parties may be involved in or liable for causing an accident, and because multiple policies or claims may be pursued for any particular accident, it is often helpful to have the advice and representation of a Florida Motorcycle Accident Attorney to make sure the victim's rights are enforced and that appropriate and fair compensation is sought from all available sources. After all, as great as our legal system of justice may be, nobody can reverse time or undo the calamity that often accompanies a motorcycle

accident, so our legal system only permits a victim to receive fair compensation for the damages suffered by the victim.

CAN A CASE OR CLAIM STILL BE PURSUED ON BEHALF OF AN INJURY VICTIM IF A TRAFFIC CITATION IS NOT ISSUED?

The simple answer to this question is "Yes." Police are called to many accident scenes involving personal injuries. At the accident scene, the investigating officer will assess the evidence in the roadway and take statements from the drivers, witnesses, and the injury victim. In Florida, there is no legal requirement that a police officer issue a citation to any driver at the accident scene if the police officer believes that no traffic regulation was violated. Alternatively, the police officer may not be able to assess fault based on conflicting statements or evidence presented to the police officer.

Whether a traffic citation is issued or not, an accident report is typically prepared when a person is injured as a result of a Florida Motorcycle Accident. If a traffic citation is not issued, a case or claim can still be pursued on behalf of the injury victim. In Florida, the police officer is not given the authority to decide insurance claims or civil cases. In other words, the pursuit of a civil case is not contingent upon the issuance or lack of issuance of a traffic citation by the police officer.

CAN A CASE OR CLAIM STILL BE PURSUED ON BEHALF OF AN INJURY VICTIM IF THERE IS NO POLICE REPORT?

The simple answer to this question is "Yes." A claim or case can still be pursued even if there is no police report of the motorcycle accident. For most Florida Motorcycle Accidents involving an injury that requires medical care or treatment, the police are called to the scene of the accident and thereafter issue a police report regarding the accident investigation. The police report and the observations of the police officer can be used for documentation as part of the investigation by a Florida Motorcycle Accident Attorney representing the victim's interests in a personal injury claim. In some instances involving a personal injury, the police, for one reason or another, are not called to the scene of the accident. In these situations, a personal injury case or claim can still be pursued on behalf of the injury victim even without a police report. A police report is usually helpful to the parties involved in an accident in terms of gathering evidence and identifying relevant information about the accident. Therefore, it is best if you call the police to the scene to complete a report.



In the State of Florida, there is no statutory requirement that a police investigation be conducted or that a police report is presented in order to pursue a claim for injuries resulting from motorcycle accident. While it is often helpful to have a police report and have the information documented by a police officer, the case can still be pursued without one. Many people do not realize that even when the police investigate an accident and issue a police report that the actual police report is not admissible in evidence or shown to a jury in a civil trial. Under Florida law, the “Accident Report Privilege,” prevents the accident report from coming into evidence. The rationale for the privilege is that the state wants to promote truthfulness in reporting accidents to police without penalizing the parties involved in the accident for making statements to the police. It’s sort of like a protection against self-incrimination, because what you say to the police to complete an accident report cannot be, “...used against you in a court of law.”

WHAT ARE THE CHALLENGES TO VICTIMS DEALING WITH PERSONAL INJURIES RESULTING FROM A FLORIDA MOTORCYCLE ACCIDENT?

When a person is injured or killed as a result of a Florida Motorcycle Accident, there are a number of challenges and issues that arise including, but not limited to, the following:

- Selecting of medical providers or specialists for treatment under the applicable health insurance plan(s);
- Obtaining insurance information;
- Understanding insurance information;
- Communicating with the insurance company and adjusters;
- Dealing with bill collectors;
- Collecting or pursuing damages for lost wages;
- Transporting the patient for medical care;
- Paying medical bills;
- Reimbursing the patient for out of pocket medical bills; and
- Compensating the client for pain, suffering, and other related damages.

WHAT IS THE STATUTE OF LIMITATIONS FOR A FLORIDA MOTORCYCLE ACCIDENT PERSONAL INJURY CASE?

A statute of limitations is the time period or deadline that an injured person is provided under the law to file a lawsuit for personal injuries sustained as a result of a particular incident. If the case is not settled without litigation being commenced, a lawsuit may be filed to enforce the rights of the injured person, assuming that the basic elements of the case can be proven. Commencement of a lawsuit prior to the expiration of the applicable statute of limitations is mandatory. The failure to do so may forever bar the claim or case from being pursued. A practical analysis should be performed for each case before filing a lawsuit. This evaluation by your Florida Motorcycle Accident Attorney considers the time involved in presenting the case, the amount of money necessary to pay for the litigation including expert witness testimony, reconstructions etc., and the likelihood of success in litigating the case through trial.

Case Against At-Fault Driver, Employer of Driver, Vehicle Owner, and Employer / Company of Driver

Generally, in Florida, a negligence lawsuit must be filed within 4 years of the date of the Florida Motorcycle Accident to comply with the applicable statute of limitations. The 4 year time period applies to cases against the at-fault driver, employer of the driver, and the owner of the vehicle. It should be noted that this is a general rule as there are limitation periods that are shorter than 4 years that may apply to your case. As such, there are exceptions and an injury victim should not wait until the expiration or the near expiration of the statute of limitations to take action. Consulting a Florida Motorcycle Accident Attorney should help you understand the applicable limitation periods to your case.

Case Against Uninsured/Underinsured Motorist Insurance Carrier

Generally, in Florida, a lawsuit against an accident victim's own insurance company to recover benefits under his/her own policy must be filed within 5 years of the date of the Florida Motorcycle Accident to comply with the applicable statute of limitations. It should be noted that Uninsured/Underinsured Motorist cases may also be based on the contract provisions. Again, the general rule of law subject to exceptions and other circumstances requires an injury victim to file a lawsuit within 5 years from the date of the Florida Motorcycle Accident for a case against an Uninsured Motorist or Underinsured Motorist insurance company.

Watching Out for Motorcyclists





MOTORCYCLE ACCIDENTS - RULES OF THE ROAD, NEGLIGENCE, AND RIGHTS OF BIKERS

CARELESS AND NEGLIGENT DRIVING

In order to obtain a motorcycle license in the State of Florida, a motorcyclist is required to take a course that is at least 12 hours in length. The approved motorcycle safety courses may contain at least 6 hours of actual motorcycle operation. Furthermore, most motorcycle enthusiasts and owners are very conscientious about motorcycle safety and being knowledgeable about the basic, as well as more advanced mechanics and operation of a motorcycle. While most motorcyclists are careful law abiding citizens, there are other drivers on the road who carelessly operate their motor vehicles which, in turn, put motorcyclists at risk for serious personal injuries. As part of the practical handling of injury claims and cases, the terms "carelessness" and "negligence" are often used interchangeably. There is a specific statute that covers "Careless Driving." There is not a specific statute titled "Negligent Driving." That term is most often used in the civil law context.

Pursuant to Section 316.1925 (1), Florida Statutes - Careless Driving:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

With respect to motorcycle accidents, this statute is particularly applicable. Any time a motorcycle is hit by another vehicle or forced to take an evasive maneuver, the motorcyclist is at risk for injury to life, limb, and property. Motorcyclists do not have the same crashworthiness protections that are part of most passenger motor vehicles.

Drivers should be careful when operating a motor vehicle. While this is common sense, it is also clearly part of the Florida Statutes. There are a number of ways in which a driver of a motor vehicle can be careless, including but not limited to: rear ending another vehicle, changing lanes when it is unsafe to do so, violating or disobeying street signage and signals, exceeding the speed limits, passing in a no passing zone, passing when it is unsafe to do so, and making a left hand turn into the right of way of a motorcyclist.

It should be noted that under Florida law, careless driving does not need to be a willful, malicious, purposeful, or intentional act. For instance, if a driver crashes into a stopped motorcycle as the driver was approaching a red light because he/she was distracted for moment by a flashing billboard, a police officer could issue the driver a "careless driving" citation. If the motorcyclist is injured, the motorcyclist could pursue a civil case or insurance claim for negligence against the at-fault driver. While careless driving is similar to negligent driving, the term and act of "reckless driving" is much different. See, *Reckless Driving Causes Injuries to Motorcyclist*.

In the aftermath of a motorcycle accident caused by reckless or negligent driving, there are typically a number of questions, challenges, and issues for the injured motorcyclist and the family. There is much more to the case or claim than the issuance of a traffic citation to the other driver. Insurance companies are well equipped and staffed to defend a claim or case to protect the insurance companies and their insureds. Insurance companies hire and employ investigators, in-office claims adjusters, field adjusters, bodily injury adjusters, property damage adjusters, medical bills processors, medical bill auditors, and others making a formidable army to challenge many cases and claims. The injured motorcyclist and family should also have an advocate in place to protect and enforce their legal rights in the aftermath of a motorcycle accident. A Florida Motorcycle Accident Attorney can help level the playing field for the injury victim against the insurance companies.

EXAMPLES OF CARELESS AND NEGLIGENT DRIVING

When a person is injured as a result of a Florida Motorcycle Accident, a case or claim can be pursued for damages and compensation if the crash was caused by the fault, negligence, or carelessness of the truck driver. There is a Florida Statute that

specifically addresses such a scenario. Section 316.1925, Florida Statutes, Careless Driving, provides as follows:

(1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

It is important for drivers in the state of Florida to obey traffic rules and regulations including but not limited to those related to speed limits, traffic lights, stop signs, school zones, residential areas, and highway driving. A major problem in Florida involves distracted driving involving mobile phone usage, web browsing, e-mailing, and texting. There are a myriad of situations that can lead to an automobile accident during any given car trip, whether it is just a short trip to the grocery store or a longer trip on Interstate 95, Interstate 10, or on any other roadway in Florida.

Each motorcycle accident should be evaluated on its own particular details, facts, and merits. A civil case or claim can be pursued on behalf of the personal injury victim if it can be established that another driver was at-fault or somehow responsible for the crash. Careless or negligent driving can include any of the following:

- Driver runs a stop sign.
- Driver makes an errant or dangerous left hand turn in violation of the right of way of the biker.
- Driver exceeds the speed limit and crashes into a motorcycle.
- Driver ignores road and weather conditions and loses control of his or her vehicle.
- Driver rear ends a motorcycle which is stopped or slowed down for traffic.
- Driver attempts an illegal or improper U-Turn.
- Driver hydro planes on a wet or slick road and crashes into a motorcycle.
- Driver fails to stop at a posted stop sign.
- Driver fails to yield the right of way at a posted yield sign.
- Driver fails to yield the right of way to a biker.
- Driver is impaired by drugs/alcohol and hits a biker.

The above list is not exhaustive of the various reasons that a Florida Motorcycle Accident can occur and give rise to a legal case or claim to be brought on behalf of an injury victim. Again, like each client, each case or claim is unique and needs to be evaluated based on its own facts, merits, and circumstances. When there is a crash that is caused by the fault, negligence, or carelessness of another driver, the injury victim should seek compensation for his or her injuries to the fullest extent under Florida law based on the merits of that particular claim or case.

RIGHT OF WAY VIOLATIONS

Under Florida law, a motorcyclist has the right to seek damages/compensation for personal injuries that are suffered as a result of the negligence, carelessness, or recklessness of another driver. Many motorcycle accidents result from a violation of the right of way of the motorcyclist. Other drivers should, "Watch Out for Motorcycles" and should, "Look Twice for Motorcycles." Unfortunately, many drivers fail to see or observe motorcyclists on the roads, streets and highways. Many motorcycle accidents result from the violation of the right of way of the motorcyclist.

One common right of way violation involves an errant or dangerous left hand turn into the path of a motorcyclist. Pursuant to Section 316.122, Florida Statutes - Vehicle Turning Left:

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

As such, when a motorcyclist is proceeding straight along a roadway, a driver attempting to turn left shall yield the right of way to the motorcyclist. The violation of the right of way of the motorcyclist occurs for a variety of reasons on the part of the negligent driver including but not limited to speed, inattention, and distraction. Many such violations of the right of way of the motorcyclist result in injuries to the motorcyclist even if the vehicles (motorcycle and car) do not collide. A motorcyclist often takes evasive measures to avoid the crash with the vehicle, but still suffers personal injury if they have to lay down the bike or strike another object or curb.

Another common right of way violation occurs when a driver changes lanes into the right of way or path of travel of the motorcyclist. Pursuant to Section 316.085 (2), Florida Statutes - Limitations on Overtaking, Passing, Changing Lanes, and Changing Course:

No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction.

Again, drivers often do not notice or see motorcyclists on the roadway until it is too late. Drivers should respect the right of way and presence of motorcyclists on the streets. If drivers reduce their speeds and increase their attention on the primary task at hand (driving), then many lane changes or violation of right of way accidents with motorcyclists can be avoided.

A right of way motorcycle accident can result in serious personal injuries to the motorcyclist and a rider (passenger) on the motorcycle. In the aftermath of a motorcycle accident, the injured biker is faced with a number of challenges including, but not limited to: medical bills, immediate medical treatment, and follow-up medical treatment. Insurance companies often challenge the injuries resulting from a motorcycle accident. Furthermore, a settlement for motorcycle accident related personal injuries takes time to complete. It is important that the personal injuries are well documented and that the claim and case are properly presented to the insurance company. Let's face it. Insurance adjusters work for insurance companies and are quite loyal to their employers. It is important for a motorcycle accident victim and family to have an advocate in place in the form of a Florida Motorcycle Accident Attorney.

CARELESS LEFT HAND TURNS

One common cause of Florida Motorcycle Accidents involves a careless or negligent left hand turn. There is a campaign that has been out there for a number of years with the simple message, "Look Twice for Motorcycles." This simple, but great advice is especially applicable to the driving maneuver of making a left hand turn. Any time a driver is attempting a left hand turn at an intersection involving two-way traffic, the person attempting the turn should make sure that it is safe and clear to do so. There should not be any doubt about the speed, distance, and safety of oncoming traffic for a person intending on completing the left hand turn. If there is some safety concern

or timing question about the turn, the driver should wait and allow oncoming traffic to clear before attempting the left hand turn.

Pursuant to Section 316.151, Florida Statutes, the following Florida law applies to left hand turns at intersections:

316.151 Required position and method of turning at intersections.–

(1) The driver of a vehicle intending to turn at an intersection shall do so as follows:

(b) Left turn.–The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

It should be noted that the majority of motorcycle accidents in the State of Florida involve front end crashes, rather than rear end collisions. Because of the size, height, and width of most motorcycles, motorist often fail to see motorcycles as they are approaching from the opposite direction. In addition, there is a rampant problem with motorists who speed, who are distracted, and who otherwise operate their motor vehicles in a careless and negligent manner.

For some motorcycle crashes, there is no contact between the turning vehicle and the motorcyclist; however, there is still a crash of the motorcycle due to evasive maneuvers by the biker who did what he or she could to avoid crashing into the negligent turning vehicle. As such, the report of a single vehicle (motorcycle) accident in a news report may be somewhat misleading at times.

When pursuing a claim or case for personal injuries in the State of Florida, it is helpful if the other driver is issued a traffic citation; however, it should be noted that the issuance or lack of issuance of a traffic citation is not a controlling fact on the civil case for personal injuries. In other words, the investigating police officer, who most likely did not witness the actual crash taking place, does not get to control the future or results of the civil case. In fact, the issuance of a ticket is not admissible in evidence at trial under most circumstances.

Under the aforementioned Florida Statute, the law essentially gives the right of way to oncoming traffic. The driver of a motor vehicle in the State of Florida (as well as other states) must be careful when attempting a left hand turn. There is a duty to yield to oncoming traffic. The failure to yield can, and does, lead to horrific consequences in the form of personal injuries and even the wrongful death of motorcyclists.

IMPROPER LANE CHANGES

Motorcyclists have the right, freedom, and liberty to ride on the public streets, highways, interstates, and expressways. It is important the other drivers be on the lookout for motorcyclists and honors these rights. Unfortunately, far too many drivers of motor vehicles are distracted, in a hurry, or just careless when operating motor vehicles. As a result, automobile/motorcycle accidents take place that could have otherwise been avoided with better attention, slower speeds, and a solid awareness of traffic and the positioning of motorcycles rightfully on the roads.

Section 316.085, Florida Statutes, Limitations on Overtaking, Passing, Changing Lanes and Changing Course sets forth the law in Florida on changing lanes as follows:

(2) No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction.

Essentially, a driver should check to make sure that the lane is clear and it is safe to change lanes before attempting to do so. Because of the size and height of motorcycles, drivers often do not see the motorcyclist until it is too late. Changing lanes into the path of a motorcyclist can have devastating consequences in the form of a crash OR forcing the motorcyclist off course in which the motorcyclist. Under either circumstance, a motorcyclist can suffer serious personal injuries or even die as a result of the negligent acts of another driver.

Whenever there is a case involving a lane change violation, there can still be a challenge to the liability by the insurance company for the at-fault driver. It should be pointed out that the issuance or lack of issuance of a traffic citation does not absolutely control the course and direction of an insurance claim or a civil case; however, it is usually helpful if the other driver is issued the traffic citation. While the issuance of the traffic citation is not dispositive or conclusion, this fact can help convince the insurance adjuster/

insurance carrier of the fault or liability of the driver. Keep in mind that, in most cases, the police report and traffic citation are not admissible as evidence in a civil case. As such, the facts through testimony and other evidence must be presented to show that the other driver improperly and carelessly changed lanes into the motorcyclist's right of way to prevail on cases involving allegations of improper lane changes.

In the aftermath of a Florida Motorcycle Accident, there are a number of challenges, issues, and questions that face the injured biker and the family. The laws can be somewhat confusing. For instance, there is a set of "no-fault" laws in place in Florida. Many people believe that these "no-fault" laws prevent a victim from seeking or obtaining justice. It should be noted that the "no-fault" laws merely refer to how some of the initial medical bills are handled and how certain injuries are defined when there is a motor vehicle accident; however, Florida, like most other states, allows an injury victim to see compensation when there is a serious injury for medical bills — past and future, pain, suffering, mental anguish, and the loss of enjoyment of life.

Each case must be evaluated on its own facts and merits. Due to the complexities of personal injury cases including motorcycle injury cases, it is important to get an experienced attorney in place for guidance, direction, and, yes, legal representation.

HEAD-ON MOTORCYCLE COLLISIONS AND ACCIDENTS

In the State of Florida and other states, it is interesting to note that like the typical motor vehicle to motor vehicle accident or crash - a motorcycle accident can also involve a rear end crash. Many more motorcycle accidents or crashes involve a front end collision with the motorcycle due to a negligent left hand turn by the driver or other violation of the right of way of the motorcyclist. Front end collisions are particularly troublesome and dangerous for the motorcyclist who lacks the protections that are afforded to most drivers and occupants of passenger motor vehicles and commercial trucks, i.e. "the cage."

It is important to "Watch Out for Motorcycles" and "Look Twice for Motorcycles." These slogans and campaigns are more than catchy or well-known phrases. When a driver gets on the road, there is a duty to drive in a reasonably safe manner paying attention to traffic signals, posted speed limits, traffic, weather and other factors that may affect driving. Motorcycle accidents and crashes are quite unique and a bit different than other types of motor vehicle crashes. Approximately 25 % of motorcycle accident related personal injuries result from a single motorcycle crash without an impact or contact with another motor vehicle.

For instance, let's say that a motorcyclist is proceeding at a safe speed through an intersection. A driver, approaching from the other direction, attempts to make a quick left hand turn without putting on his signal. The driver forces the motorcyclist to take evasive action and lay the motorcycle down to avoid a crash with the vehicle and to attempt to minimize the impact of a crash. The motor vehicle sustains no damage at all; however, the motorcycle is significantly damaged and the motorcyclist suffers multiple personal injuries requiring emergency medical care and months of follow-up care. Under this fact pattern, the motorcyclist can pursue a case or claim against the at-fault driver for negligence. From a practice standpoint, it is always preferable that the at-fault driver had sufficient automobile insurance to cover the damages related to the personal injuries.

When a motorcyclist suffers personal injuries as a result of a front end collision or avoiding a front end collision, there are a number of challenges faced by the injury victim and family. Medical care can be quite costly and this can be particularly problematic if the motorcyclist lacks health insurance. There are still ways in which a motorcyclist can obtain medical treatment. Some doctors in the community understand and appreciate the plight of an injured motorcyclist and will agree to treat the injured biker on a "wait to get paid" or reimbursed basis. There is no requirement per se that any particular doctor provide treatment in this fashion. Bikers are fortunate enough to be able to see one of these physicians when they work in conjunction with a Motorcycle Accident Attorney.

When there is a front end collision, the motorcyclist may suffer head, back, neck, upper extremity (hand, wrist, arm, or shoulder), lower extremity (foot, ankle, knee, or leg), and other serious personal injuries. Even in circumstances where fault seems clear and the other driver was issued a citation, the insurance company may still challenge liability or fault for the crash. One typical move by the insurance companies is to blame the motorcyclist in whole or part for the cause of the crash. Insurance companies will attempt to do this move even when the other driver is clearly at-fault and received the citation. Keep in mind that the traffic citation in the State of Florida does not control the liability or fault portion of the civil case. In fact, the issuance of a traffic citation is typically inadmissible in a civil trial seeking damages for personal injuries caused by a motorcycle accident.

An injured biker and family should seek out the services, advice, and representation of an experienced Florida Motorcycle Accident Attorney. These cases are complex and often challenged. Insurance companies are well represented by adjusters, investigators, and, yes, attorneys. An injury victim should also have an advocate in place in the form of an established law firm.

INTERSECTION MOTORCYCLE ACCIDENTS

There is a common roadway area in which motorcyclists are put at risk for personal injuries on a daily basis: the intersection. Motorcycles, by virtue of their size, weight, and volume, are no match whatsoever for any crash or impact with a passenger motor vehicle or a commercial motor vehicle. Unfortunately, due to distracted driving, excessive speed, or just negligence or carelessness, motorcyclists are hit or run off the road at intersections in just about every community. Many such motorcycle or motor vehicle accidents take place when the driver of the motor vehicle violates the right of way of the motorcyclist. In many instances, a motorcyclist will attempt to avoid the crash by turning, braking, and/or laying the bike down. Even when there is no impact with the motor vehicle, serious personal injuries can certainly befall the motorcyclist who, prior to the crash, was obeying the law and operating his motorcycle in a safe and reasonable manner.

With the proliferation of mobile phones which are now in the possession of most every driver, distracted driving is a problem and danger out on the roadways. Instead of being on the lookout for motorcycles, bicycles, and pedestrians at an intersection, drivers are now looking down to check that next email, text message, or funny video on Facebook. However, there is nothing funny about a violation of the right of way of a motorcyclist leading to serious personal injuries. Simply stated, drivers should put down the mobile phone and lift up their eyes to be on the lookout for motorcyclists and others on or near the roadway.

Many intersections have a posted stop sign in place. There is a clear purpose for the stop sign as to the flow and order of traffic. All vehicles should come to a safe stop at the stop sign and then look for crossing or approaching vehicles. Unfortunately, drivers are often in a hurry and do not see a motorcycle coming through or approaching an intersection until it is too late to take actions to protect the motorcyclist who is otherwise operating his bike in a safe and reasonable manner.

Some motorcycle accidents boil down to conflicting stories or statements as to the cause and preventability of the motorcycle accident. In these situations, it is helpful to have independent witness statements and other evidence to support the position of the motorcyclist. If the responding police officer issues a citation to the other driver, the driver and his insurance company can still challenge the liability or fault for the crash or accident. Some cases are not clear cut, but can still be pursued based on the statement and observations of the motorcyclist as well as the physical and forensic evidence available.



In the aftermath of a motorcycle accident, it is important for a motorcyclist to seek out legal representation. Insurance companies are represented by a team of attorneys, adjusters, field adjusters, and investigators. It is important for a motorcycle injury victim to be represented as well.

T-BONE MOTORCYCLE ACCIDENTS

T-Bone motorcycle collisions and accidents occur when the front of one vehicle collides or crashes into the side of another vehicle. Essentially, the formation of the crash at the point of impact forms a "T." These motorcycle accidents or crashes are also commonly referred to as side impact or broadside crashes or collisions. Many accident victims and family members do not understand or realize that a broadside or side impact crash is essentially the same or similar crash to one described as a "T-Bone" type of crash. Police reports are not consistent or uniform across the board in utilizing these terms. As such, some police reports will refer to the crash as a side impact, broadside, or "T-Bone" type of case. Some police reports will even use all terms in one police report.

A "T-Bone" type of crash can have devastating results when two motor vehicles collide and even more so when one of the vehicles involved is a motorcycle. When a driver or occupant of a passenger motor vehicle is involved in a "T-Bone" type of crash, there are certain protections in place to shield the blow. Some are: the door of the vehicle itself, seatbelts, air bags (side and front), the frame of the vehicle, and other safety features. There is a huge difference between the impact to a motorcycle versus the impact to a passenger motor vehicle or a commercial motor vehicle. While ejections from a motor vehicle are not very common, ejections happen quite frequently in a motorcycle accident. The National Highway Traffic Safety Administration (NHTSA) reports that "Ejection from the motorcycle is a common injury pathway."

There are a number of causes for "T-Bone" type of crashes. The driver of a motor vehicle may carelessly run through a stop sign, yield sign, or traffic signal. This, in turn, violates the right of way of the motorcyclist and causes the crash. Intersections are common locations of "T-Bone" types of collisions. In many crashes, the driver of the motor vehicle states that he or she did not see the motorcycle. This defense or argument can be quite weak especially on clear sunny days in light traffic. Even with poor weather and night time driving, motorists should be on the lookout for motorcyclists and honor their right of way and respect their safety.

Following a motorcycle accident, it is helpful to get photographs of the property damage of each vehicle and the scene of the accident. Photographs showing the viewpoint of the motorcyclist and photographs showing the viewpoint of the driver can help illustrate how the "T-Bone" collision took place. At times, road and other construction can change the appearance of the scene of the accident. As such, timely photographs of the scene of the accident can be quite helpful.

In the aftermath of a "T-Bone" crash or collision, there are a number of challenges and issues that face the injured motorcyclist. Even if the police officer issues a traffic citation to the other driver, that does not mean that the case as to liability or damages will be an "open and shut case" from the perspective of the insurance company reviewing the claim. The police report is only one piece of the puzzle that comprises the case or claim on behalf of the injured motorcyclist. Florida law can be quite confusing as to what is compensable, the value of a case, and steps to take to properly protect and enforce the rights of the injured motorcyclist.

Here are some common issues related to a "T-Bone" or broadside motorcycle accident:

What were the traffic conditions at the time of the crash?
(Light, Moderate, or Heavy)

What were the weather conditions?

Did any weather conditions contribute to the cause of the crash?

What was the speed limit in the area of the crash?

Were the respective vehicles obeying the speed limit?

Was any driver using a mobile device prior to or at the time of impact?

What road signage or traffic signals were in place?

Were there any independent witnesses to the crash?

Did the police officer issue a citation due to the crash or accident?

What medical care was rendered to the injured motorcyclist just following the accident?

What follow-up medical care was rendered to the injured motorcyclist?

What motorcycle, automobile, and/or commercial insurance policies provide coverage to the injured motorcyclist?

Of course, each case like each client is unique and should be evaluated on its own facts and merits. Because of the complexities of motorcycle accident cases including those

that involve a broadside or “T-Bone” type of crash, the injured motorcyclist and family should seek out the services of a Florida Motorcycle Accident Attorney for advice, guidance, and legal representation.

REAR END MOTORCYCLE ACCIDENTS

Statistically, rear end accidents are more common in motor vehicle to motor vehicle crashes than in cases involving motor vehicle to motorcycle crashes. Statistics are a bit irrelevant when you or a family member is the victim of a motorcycle accident in which a driver crashes into the back of a motorcycle. In most motorcycle crashes, injuries are sustained because a motorcycle is no match for the size, weight, power or force of the typical passenger motor vehicle, even if a crash involves slow or minor speed impacts.

Pursuant to Section 316.0895, Florida Statutes, the following law applies to rear end accidents:

316.0895 - Following Too Closely -

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway.

When there is a rear end crash, this statute is often referenced by the investigating police officer when a citation is issued to the driver of the motor vehicle that rear ends a motorcyclist or another driver. In the State of Florida, there is a presumption that the driver of the vehicle who rear ends another driver or motorcyclist is at-fault for the crash or accident. However, it should also be pointed out that the presumption can be overcome by other evidence and testimony. The presumption under Florida law based upon the aforementioned statute and case law is not absolute, it is rebuttable.

As noted by the Florida Supreme Court in Cevallos v. Rideout, 107 So. 3d 348 (Supreme Court of Florida, 2012), “The presumption of negligence that attaches to a rear driver in a rear-end motor vehicle collision case can be rebutted or avoided by the production of evidence from which a jury could find negligence on the part of the front driver that contributed to bring about the injury-producing collision.”

It is important that other drivers watch out for the presence of motorcycles on the streets, roadways, and highways. Many rear end related crashes are related to excessive speed, distracted driving, and careless driving. Many drivers are in a hurry to get to the

next destination and this haste often leads to a crash into the back of a motorcycle that causes serious personal injuries to the biker.

Let's say that a motorcyclist is stopped at red light on a clear and sunny day. Out of nowhere, a driver crashes into the rear end of the motorcycle causing the biker to fall down. This crash causes personal injuries and the motorcyclist is transported by fire rescue to a local emergency room. There were two independent witnesses to the crash. Under this fact pattern, one may assume that the case is an "open and shut" case. However, for many personal injury cases or claims, the fight or battle has just begun. Even when liability or fault is clear, insurance companies will still challenge the severity of the injuries and the relationship of the claimed injuries or damages to the subject motorcycle accident. If the motorcycle only has one ER visit, this case would be evaluated much differently than one involving months of therapy, pain management injections, and related medical care.

REAR END SHUNT MOTORCYCLE ACCIDENTS

A motorcyclist can be seriously injured in a particular type of crash designated as a rear end shunt motorcycle accident. The term "shunt" refers to the force of being pushed forward into another vehicle. There is a chain reaction in rear end shunt accidents that may involve a number of vehicles including a motorcycle. The injuries or effects can be quite devastating to the biker caught into between two vehicles as a result of these rear end motorcycle accidents. For example, let's say that a motorcyclist is properly stopped at a red light behind a motor vehicle which is also properly stopped. Another driver behind the motorcyclist, who was speeding and otherwise distracted by a text message, crashes into the rear end of the motorcycle, which causes the motorcycle to "shunt" forward into the vehicle in front. As a result of the crash, the motorcycle is damaged on both the front and back end by a crushing type of force or mechanism. As a result of this crash, the motorcyclist suffers serious personal injuries.

It is common to see neck, back, and related personal injuries as a result of a rear end shunt motorcycle accident. Even though the motorcyclist in the above example was following the law and otherwise conducting himself in a safe manner, the motorcyclist was put in a vulnerable and dangerous position due to the reckless and careless driving of another person.

While rear end motorcycle accidents are not as common as head on collisions, rear end motorcycle accidents are still common in most every community. With more attentive driving, rear end crashes including rear end shunt motorcycle accidents can

be prevented. It is important for each driver to pay attention to road, traffic conditions, and signage/signals that direct the flow of traffic.

Even though the personal injuries that flow from a motorcycle accident may seem clear on the face of things - insurance companies still challenge most injury cases that are submitted. Medical records and bills are scrutinized by medical doctors and billing personnel hand-picked by the insurance companies for the purpose of challenging claims and saving money. Yes, this even applies to a motorcycle accident with serious injuries.

When a motorcyclist is injured from a rear end shunt collision or other type of crash, it is important for the motorcyclist and family to have a Florida Motorcycle Accident Attorney in the biker's corner to fight the battle against the insurance companies who often put profits and savings over people. An injured motorcyclist should be compensated for medical bills - past and future and pain, suffering, mental anguish, and loss of enjoyment of life.

SINGLE MOTORCYCLE ACCIDENTS

It has been reported that approximately 25 % of motorcycle accidents involve a single motorcycle crash, no other vehicles involved. Some of these crashes result from poor road conditions, debris, road construction, mechanical issues, and operator (motorcyclist) error in the form of distraction, inattention, excessive speed, or impairment. A good portion of these crashes result from the negligence or carelessness of other drivers. In these cases, the single motorcycle crash results from the motorcyclist taking evasive action to avoid the crash and potential harm to others. However, any time that a motorcyclist is forced off course - there can be serious consequences in the form of a crash and personal injuries.

It should be noted that all facts and circumstances of a particular crash should be evaluated including the property damage of the respective vehicles involved in the motorcycle accident. The fact that the motor vehicle that violated the right of way of the motorcyclist did not sustain any property damage does not mean that the driver is free from fault or liability. The rules of the road and the rights of the motorcyclist should be respected and followed.

It should be noted that the police report and issuance of a citation can provide for good support for a claim or case on behalf of the motorcyclist. For instance, let's assume that the driver, who attempted the left hand turn, was issued a citation and the police

officer wrote up the report in a manner that essentially absolved the motorcyclist from any fault, carelessness or liability. While it is helpful from a claim and case standpoint to have a favorable police investigation and report supporting your theory of the case, Florida has a law in place known as the Accident Report Privilege. As a result of this law, the actual police report, statements given to the police and the issuance of a citation are all inadmissible as evidence if the case proceeds to a trial. Evidence must be presented in other forms to establish the fault or liability of the other driver involved in the motorcycle accident. As such, many personal injury victims are surprised to learn about the Accident Report Privilege, especially if the personal injury victims are finding out about this concept for the first time at trial.

The Florida Accident Report Privilege is codified in part in Section 316.066 (4), Florida Statutes - Written Report of Crashes which provides as follows:

Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. Such report or statement may not be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the crash if that person's privilege against self-incrimination is not violated. The results of breath, urine, and blood tests administered as provided in s. 316.1932 or s. 316.1933 are not confidential and are admissible into evidence in accordance with the provisions of s. 316.1934(2).

As such, the statement of the at-fault driver to the police officer along with the citation issued cannot be presented as evidence. There are some exceptions to this rule. But for most cases, the police report and statements to the police do not come in as evidence.

Because of the complexities of Florida Motorcycle Accident cases and Florida law, a motorcycle accident personal injury victim should contact an attorney for advice, guidance, and legal representation.

LOSING CONTROL ON TURNS - MOTORCYCLE ACCIDENTS

Many motorcycle accidents occur due to a motorcyclist losing control in a turn. In the State of Florida, there is a comparative fault set of laws in place. As such, even if the motorcyclist is partially at-fault for a motorcycle accident, there still can be an injury claim or case pursued if some of the fault for the crash can be apportioned, in part or whole, to the other driver. Operating a motorcycle is a bit more challenging than the skills required to operate a typical passenger motor vehicle. As such, there is less room for error. Furthermore, any time that a motorcyclist has to change direction, change lanes or take evasive action in response to the negligent driving of another person - there can be a motorcycle accident that results in personal injuries.

It should be noted that a motorcycle has the right to the roads, streets, and highways in the same manner as motor vehicle drivers. In fact, there is a statute in place that mandates to all drivers to obey the rights, freedoms, and liberties of a motorcyclist.

Section 316.209 (1), Florida Statutes - Operating Motorcycles on Roadways Laned for Traffic provides as follows:

All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such manner as to deprive any motorcycle of the full use of a lane.

When motor vehicles drive too close to a motorcycle or interfere with the right of way of the motorcyclist, there can be a motorcycle crash, especially when a motorcyclist is in the process of turning the motorcycle. When there is a quick turn while driving a motor vehicle, there typically are no adverse consequences because of the design of the motor vehicle and the average driver's ability to maintain control of the motor vehicle. Even the most experienced and skilled motorcyclist can lose control of the motorcycle while attempting a turn.

A motorcycle accident caused by the loss of control during a turn can lead to serious and permanent personal injuries. There are many challenges to the pursuit of a motorcycle accident case especially when the insurance company is attempting to blame the motorcyclist for part or all of the motorcycle accident or crash. Because of this, the injured motorcyclist or the family of the injured motorcyclist should reach out and consult with a Florida Motorcycle Accident Attorney for advice, guidance, and legal representation.

Insurance often plays a key role in the practical pursuit of a motorcycle injury case. In Florida, many motorcyclists do not have any medical coverage under their motorcycle insurance policy since it is not required in Florida. It is helpful if the other driver had Bodily Injury insurance in place which could provide a source of compensation for the injured motorcyclist. However, settlements under Bodily Injury insurance are typically only completed on a one-time payment basis. As such, in the interim prior to the settlement, the motorcyclist is faced with the challenge of obtaining medical care and dealing with the medical bills and out of pocket expenses pending the potential future settlement.

MOTORCYCLE MANEUVERABILITY ACCIDENTS

Motorcycles by their design, structure, and size can maneuver quite well through most roads, streets, and highways. It should be noted that a motorcyclist has the right to be in a lane of travel and should be given space by other motorists to safely operate the motorcycle. A motorcyclist must go through a 12 hour training course with at least 6 hours of the course dedicated to the actual use and operation of the motorcycle.

When another driver violates the right of way of a motorcyclist or otherwise forces a motorcyclist to take evasive measures, the motorcyclist may be able to maneuver or change course in a manner that avoids an impact or fall. Unfortunately, many such incidents do result in a motorcycle accident, even with an experienced and skilled motorcyclist riding the motorcycle. It should be noted that a motorcyclist has the right under Florida law to ride his or her motorcycle on Florida roads, highways, and streets along with all other motor vehicles. A motorcyclist does not assume the risks of a crash just because there are dangers associated with the operation of a motorcycle.

Florida is a comparative fault state. As such, insurance companies often attempt to blame the motorcyclist, in whole or in part, for the crash. Insurance companies will even attempt to blame the motorcyclist when the other driver is issued a traffic citation and the liability or fault otherwise appears to be clearly on the other driver. Unless the case involves a rear end accident or a drunk driving type of incident, it is common to see attempts by the insurance companies to place some blame or fault on the motorcyclist.

When a motorcyclist suffers personal injuries as a result of a motorcycle accident, a case or claim can be pursued on behalf of the injured motorcyclist. The successful pursuit of the case or claim will depend on a number of factors including: the details of the crash or accident; the comparative fault (if any) of the motorcyclist; the injuries

sustained; the initial treatment; follow-up treatment; severity and permanency of the injuries; the amount of Bodily Injury insurance from the at-fault driver; and the amount of Uninsured/Underinsured Motorist insurance from the motorcyclist.

There are many twists, turns, and challenges to the pursuit of a motorcycle accident injury claim or case. Insurance companies do not automatically compensate an injured motorcyclist. The personal injuries and related damages must be established by the medical records, medical bills, and medical reports. Even when the injuries seem clear, the insurance companies still often find a way to challenge the injuries or claims. Insurance companies have attorneys, adjusters, and investigators in place to protect the insurance companies. The injured motorcyclist should also have an advocate in place in the form of a Florida Motorcycle Accident Attorney.

DUTY TO STOP AND YIELD TO TRAFFIC AT AN INTERSECTION WITH A STOP SIGN

Many Florida Motorcycle Accidents result from one driver running through a stop sign and/or failing to yield the right of way to traffic at an intersection with a stop sign regulating traffic. Section 316.123, Florida Statutes - Vehicle Entering Stop or Yield Intersection provides as follows:

(1) The right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in s. 316.006.

(2) (a) Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

(b) At a four-way stop intersection, the driver of the first vehicle to stop at the intersection shall be the first to proceed. If two or more vehicles reach the four-way stop intersection at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(3) The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If such a driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of the driver's failure to yield the right-of-way.

(4) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.31

In the State of Florida, the law presumes that a driver who takes a written and driving exam understands and knows the "Rules of the Road." This includes the duty of a driver who approaches an intersection with a stop sign in place, to stop. A driver should also maintain a safe speed based on posted speed limits, traffic, and road conditions. In doing so, the driver should be able to complete a safe stop at a posted stop sign. Once the stop is completed, the driver then has a duty to be on the look-out for approaching traffic before proceeding into or through the intersection.

When a person is injured as a result of the negligence of a driver who runs through a stop sign, ignores a stop sign, or otherwise unsafely / carelessly drives into the right of the way of another driver, there may be a case or claim to pursue on behalf of the victim for personal injuries. In most instances, the responding officer gets it right and issues a citation to the driver who drove through the stop sign. At times, the police officer gets two different stories and therefore does not issue a citation. Keep in mind that the issuance or lack of issuance of a traffic citation for failure to obey a stop sign does not control the civil case or insurance claim. In other words, an injury victim can pursue a case or claim even if no traffic citation was issued.

The fault of a driver for disobeying a stop sign or for failing to yield to the right of way of another motorist is just one piece of the complicated puzzle that forms a civil case or claim. There are often challenges to proving how the accident took place, the preventability of the accident, the actions of the respective drivers in the crash, medical bills, medical treatment, and other defenses posed by the insurance companies. Following a Florida Motorcycle Accident, the insurance company is ready for action

and ready to defend itself with its many adjusters, investigators, and attorneys. An injury victim should protect and enforce his or her legal rights with the hiring of an experienced Florida Motorcycle Accident Attorney.

LIMITED VISIBILITY MOTORCYCLE ACCIDENTS

While drivers of motor vehicles are generally familiar with what a motorcycle looks like and intellectually understands that motorcycles are on the road, many motorcycle accidents still take place because the driver claims that he or she did not see the motorcycle. Limited visibility motorcycle accidents take place due to a number of factors and different situations. It should be noted that the position and accompanied statement of, "I didn't see the motorcycle" is not a valid defense to a motorcycle accident or crash in the State of Florida. As noted by Section 316.1925 (1) Careless Driving, Florida Statutes:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

Being that a driver of a motor vehicle has a duty to drive in a careful and prudent manner, there can be no excuse that the driver did not see the motorcycle. Nor should "not seeing" serve to exonerate the driver from his or her responsibility for the damages and injuries caused to the motorcyclist.

Motorcycles, by their design and function, are much smaller than other vehicles on the road. As such, a driver may not see or notice the motorcycle at an intersection, adjacent lane, or other areas on or near the roadway occupied by the driver of the motor vehicle. Distracted driving is also a factor that causes many limited visibility motorcycle accidents. Other factors may include obstructing trees, shrubs, hills, turns and curves in the roadway, and of course weather. It should be noted that weather may be a factor, but statistically only a small portion of motorcycle accidents are caused by weather related conditions and factors.

Insurance companies will use a variety of measures, arguments, and tactics to avoid paying fair and reasonable compensation to an injured motorcyclist. Insurance companies will usually argue that the crash was the fault of the motorcyclist (in whole or part). While insurance companies have a duty to act in good faith and compensate

injury victims in a timely manner, there are often reasons or excuses for delays and “low ball” settlement offers from the insurance companies. Motorcycle accident victims should not assume by any measure that insurance companies will act in a fair and timely manner OR that the insurance companies, which are huge corporations, will have compassion for the motorcycle victims and families.

Also, keep in mind the motorcycle injury claim or case does not begin and end at the accident scene. Even on cases in which the other driver and the respective insurance company admit fault or liability for the accident, there are still challenges to the amount and necessity of the medical bills and treatment. One major battle seen in most personal injury cases involves the seriousness and permanency of the injuries. Insurance companies frequently argue that the treatment was excessive and that the injuries were exaggerated by the motorcycle victim and the treating doctors. Even though the motorcyclist had an otherwise healthy lifestyle, strong work ethic, and commitment to family, community, church, and country, the insurance company will still argue that the injuries and treatment sought were unreasonable and otherwise (according to the insurance company) worth much less than what was being demanded.

DRIVING OF A MOTOR VEHICLE DURING BAD WEATHER / RAIN

Drivers have an obligation to operate their vehicles at reasonably safe speeds relative to the weather, lighting/visibility, and road conditions. Inclement weather can adversely affect the operation of any motor vehicle and motorcycles. Inclement weather such as wind, rain, and ice can greatly reduce the stopping distance and crash avoidance maneuvering and steering of braking vehicles. Drivers have a legal duty to use extra caution when they are operating in adverse weather conditions, although oftentimes drivers ignore bad weather due to being rushed and late, being distracted, or other reasons. Where adverse weather, lighting/visibility, or road/traffic conditions exist, drivers owe a legal duty to other motorists sharing the roadways to slow down and exercise due care and prudence in the operation, maintenance, and security of their vehicles.

PASSING, TURNING LANES, AND RIGHT OF WAY VIOLATIONS BY OTHER DRIVERS

Drivers owe a duty to use reasonable care in the safe operation of their vehicles in order to ensure their own safety and the safety of all other motorists. Because blind-spots, external visual obstructions, lighting and weather conditions, and driver

experience are each factors in the safe operation of motor vehicles, drivers must exercise caution to ensure they are operating their vehicles safely as they proceed to their destinations.

All drivers must ensure they give sufficient advance notice of maneuvers such as passing and turning to other motorists by the use of turn signals. Drivers must also exercise more patience and allow more time when yielding to a motorcyclist since the operation and control of a motorcycle is much different than that of a motor vehicle. Furthermore, the consequences of improperly passing, turning, or otherwise violating the right of way of a motorcyclist can, and does, have serious and fatal consequences.

HEAVY MOTORCYCLE TRAFFIC - LOCAL MOTORCYCLE EVENTS AND ACCIDENTS

Florida has weather, infrastructure, and roadways that allow for motorcycle riding and related events year round. Certainly, Florida law and the United States Constitution give motorcycle enthusiasts the right to congregate and have such events. Being part of a motorcycle event, festival, weekend, and club can be great fun and part of the draw for owning a motorcycle.

Whenever there is a large, extended motorcycle event or festival, there are often motorcycle accidents and injuries that occur. Some motorcycle accidents are single vehicle events only involving one motorcycle while other crashes involve a motorcycle and one or more other motorcycles and/or motor vehicles. Certainly, when there is heavy traffic or a motorcycle event is in process, all motorcycle riders and drivers of passenger and commercial vehicles should take note and alter driving speeds and habits.

As noted in Section 316.027 (b), Florida Statutes, a person operating a motorcycle is considered a "vulnerable road user" like a bicyclist or pedestrian. This is the law in Florida, but it is also something that other drivers should know and be aware of as a matter of common sense. As such, a driver should proceed with due care and a slow speed any time that a driver is operating a motor vehicle in the proximity of one or more motorcyclists when at an event or festival.

If a motorcyclist is injured as result of a motorcycle accident, it is typically advisable to get the police involved to write a report and issue a citation when appropriate. This applies to motorcycle accidents at events and festivals as well. Stories and recollections change over time. While a police report will not solve all issues or challenges, it is

generally recommended to have the police involved to document the circumstances of the motorcycle accident, drivers involved, motorcyclists involved, witnesses, and insurance information.

Heavy traffic can be a contributing factor to the cause and circumstances surrounding a motorcycle accident. However, the fact that the traffic was heavy does not provide a per se defense to negligence. As noted by Section 316.0895, Florida Statutes, the driver of a motor vehicle shall take into account the speed of other vehicles and traffic when operating a motor vehicle. As such, Florida law makes it clear that heavy traffic alone is not a defense to the negligent operation of a motor vehicle.

The motorcyclist has every right to attend motorcycle events, rides, and festivals. Daytona Bike Week located in Daytona Beach, Florida is promoted as the World's Largest Motorcycle Event. Daytona Bike Week is promoted by local businesses and the Daytona Regional Chamber of Commerce. It brings in millions of dollars of commerce and wonderful motorcyclists and riders throughout the United States and world. At big events like Bike Week, there are typically motorcycle accidents that result in serious injuries whether at Bike Week or travelling to and from Bike Week. Many of these motorcycle accidents can be avoided by safe driving in the form of slower speeds. Furthermore, by putting down the mobile phone and other mobile devices during driving, many motorcycle accidents can also be avoided. "Watch Out for Motorcycles" is a simple statement, but following it is so important to the health, safety, and welfare of the motorcyclist who resides in or visits the community.

DRIVING MOTOR VEHICLES UNDER THE INFLUENCE RISKS TO MOTORCYCLISTS

Driving under the influence of alcohol or drugs continues to be a problem that affects communities across the United States. It is estimated that approximately 10,000 people die each year due to automobile accidents involving an impaired driver. Approximately one-third of accidents that result in a death involve a driver impaired by alcohol or drugs. Clearly, many of these crashes, accidents, and deaths could have been avoided if the driver either refrained from using drugs or alcohol on that particular day or night. Or alternatively, acted responsibly by having another person drive, staying put for the day or night, or catching a ride through a friend, cab, bus, Uber, Lyft, or other some other form of transportation.



Driving under the influence is especially dangerous to motorcyclists occupying the same roads, highways, and streets as the impaired driver. Motorcyclists are “vulnerable road users” like pedestrians and bicyclists as defined by Section 316.027, Florida Statutes. This is clear both by statute and common sense. A motorcyclist is certainly at risk for injury anytime that an impaired driver is on the road. Driving under the influence of alcohol and/or drugs dulls the senses and slows motor skills. It is important to be alert, awake, and sharp any time that a driver gets behind the wheel.

It should be noted that a case or claim can be brought by a motorcyclist for injuries caused by a driver under the influence. While there may be a strong legal case against the at-fault driver, there are still the practical considerations to the pursuit of a personal injury case seeking compensation for damages. The amount and type of insurance in place are important factors.

For instance, let’s assume that the at-fault impaired driver did not have any insurance on his vehicle. Furthermore, let’s assume that the injured motorcyclist had very limited coverage and did not have Uninsured Motorist coverage. Under these unfortunate facts, it would be difficult from a practical standpoint to pursue a civil case or claim on behalf of the injured motorcyclists. Plainly speaking, the insurance coverage is terrible so there is no way to recover any money for the injured biker. Most personal injury attorneys would ultimately turn down a case without any practical means of obtaining a recovery. While a lawsuit could be filed against the at-fault driver and the injured biker may win millions at trial, it may ultimately be difficult to collect any money from the at-fault driver if he lacks any assets to collect upon. As you can see, there certainly is more to the case than the fact that the at-fault driver was impaired at the time of the crash.

When a motorcyclist is injured as a result of the negligence of others, action should be taken to protect and enforce the rights of the injured biker. Hopefully, the right kind of insurance was in place for all parties so that the injured motorcyclist has a source of compensation and a way to deal with the real challenges in the aftermath of the crash.

LEGAL ISSUES, CASES, AND CLAIMS INVOLVED IN A DUI ACCIDENT

A person’s world as he or she knows it can be changed forever as a result of an accident caused by the drunk driving and negligence of a truck driver. In the State of Florida, a motor vehicle is considered a dangerous instrumentality. This concept is especially true when a person under the influence of alcohol, drugs, or both gets behind the wheel.

It is well known that alcohol dulls the senses and reaction time. Some people mistakenly believe that alcohol has no real effect on the ability to drive a vehicle and the ability to avoid a crash. Driving a motor vehicle under the influence of drugs or alcohol is dangerous and illegal. Civil (compensation), administrative (driver's license), and criminal (jail time - prison time - fines) consequences can result when there is a Florida DUI (Driving Under the Influence) Accident.

The initial facts surrounding a crash are important, but certainly do not amount to the entire case or the burden of proof that is required. For instance, let's say that a driver consumed 10 beers and then gets behind the wheel of a vehicle A mile from the bar, the drunk driver crashes into the a motorcycle operated by John Jones. The police arrive on the scene, administer roadside field sobriety tests, administer a blood alcohol test, and then arrest the impaired driver on the spot. Is this a case that has significant value? Well, it is difficult, if not impossible, to say based on these facts alone. All we know by the aforementioned fact scenario is that there was a crash and that the at-fault driver was arrested for DUI (Driving Under the Influence). There was no mention of medical bills, severity of any personal injuries, causation or permanency of any injuries, or medical treatment. Without knowing such information, there is no way to determine or estimate the value of the personal injury case, or whether there is even a personal injury case to pursue. As you can see, it is important to determine how the crash took place and who was at-fault. It is also important to determine the type and extent of the personal injuries suffered as a result of the accident.

Let's add some facts to the above example. Let's say that John Jones, the injury victim, sprained his wrist and went to the doctor for a total of 2 visits. A case of this nature would have low value due to the limited treatment and the minor nature of the injuries. Let's change the facts again. John Jones fractured his leg, required surgery, endured 6 months of physical therapy, and lost his job. The second set of facts would obviously produce a case with more significant value assuming that there is sufficient automobile insurance coverage or collectible assets from the at-fault driver or company to cover such personal injuries and any damages that resulted.

The fact that the crash involved a drunk driver can add value to the case in the form of punitive damages. A jury can award additional money to punish the at-fault drunk driver for his careless actions. It should be noted that punitive damages are not typically covered by insurance policies. As such, punitive damages claims against individuals may be difficult to collect upon if the individual driver lacks sufficient assets to cover a significant judgment. If a punitive damages claim can be pursued against the company employing the driver, then the collection of a sizable verdict may be accomplished if the company has sufficient assets to cover or pay for the verdict or judgment.

Keep in mind that the arrest, prosecution, and conviction of the at-fault truck driver for criminal DUI (Driving Under the Influence) does not guarantee a settlement of any certain amount for the civil case or insurance claim. The damages or injuries must be established and proved by the preponderance of the evidence at trial by the presentation of medical bills, medical records, reports, testimony, and other evidence.

When a person suffers personal injuries as a result of a DUI accident, there are a number of legal issues and challenges for the victim's family to deal with. Issues involved with a Florida DUI Accident related legal proceedings can include, but are not limited, to the following:

Criminal Case. The injury victim and family members are often called upon to testify at a criminal trial or sentencing hearing regarding the crash and resulting personal injuries. While the prosecutors ultimately decide whether to try the case or offer a plea bargain, the injury victim and family are often consulted regarding their thoughts and wishes with respect to the criminal prosecution and sentencing of the criminal defendant. A Florida Motorcycle Accident Attorney can help answer any questions about the criminal prosecution and also appear with the injury victim at any hearings or court proceedings regarding the DUI prosecution. Restitution may also be awarded for economic damages or bills associated with the personal injuries caused by the DUI driver.

Victim of Crimes Compensation Act. The injury victim may also qualify for compensation under the Victims of Crimes Compensation Act to the extent that the state has these laws or remedies in place. The injury victim and family should check with the prosecutor's office about this benefit or speak to a Florida Motorcycle Accident Attorney or the victim's advocate connected with the prosecutor/State Attorney's office.

Civil Case. It should be noted that the civil case or insurance claim on behalf of the injury victim is separate from the criminal proceeding. In most DUI cases, the insurance carrier will admit liability or fault for the accident. The battle lines are then typically drawn regarding the nature and extent of the personal injuries. Just because a person is a victim of a drunk driving incident does not mean that the insurance company will pay a lot of money to the injury victim. The value of the case is based on the medical bills, medical records, and seriousness of the injuries, need for future care, and a number of other factors.

HIT AND RUN MOTORCYCLE ACCIDENTS

Motorcyclists in the State of Florida and other states are among the proudest and hardest working people in our community. Some motorcyclists ride every day and it is ingrained as a major part of their lives. Other riders are more weekend riders or occasional riders. Motorcyclists have the right to ride their bikes on our roads, highways, and streets just like any other driver. This right should be protected and honored. It is quite disturbing when a motorcyclist is seriously injured as a result of a hit and run type of accident. Any time that there is a crash or incident involving a motorcyclist, there is a high risk of serious personal injuries. All motorists involved in such a crash or witnesses such a crash should stop to render help as needed and contact police and fire rescue for assistance. In Florida, it is a crime to flee a scene of an accident with injuries. It is also a moral crime to leave an injured motorcyclist in distress at an accident scene.

According to the Florida Department of Highway Safety and Motor Vehicles, there were over 180 drivers, passengers, motorcyclists, pedestrians, and bicyclists who died as a result of a hit and run accident in Florida in 2015. In response to such an alarming figure, the Florida Highway Patrol put a campaign in place titled "A crash is bad . . . leaving the scene makes it worse." In most automobile/motorcycle accidents, no crime is committed when simple negligence caused the accident. For instance, when there is a rear end accident without excessive speed or alcohol, a civil traffic citation may be issued. It would be uncommon to see an arrest under this simple and common fact situation. If a driver flees the scene, then a simple negligent act turns into a criminal act which can subject the fleeing driver to arrest, driver's license suspension, fines, restitution, community service and jail or prison time.

Section 316.027, Florida Statutes, Crash Involving Death or Personal Injuries, makes it a crime to leave an accident scene which results in serious bodily injury to a person. Serious bodily injury is defined in Section 316.027 (a), Florida Statutes as follows:

"Serious bodily injury" means an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

The statute also defines a vulnerable road user in Section 316.027 (b), Florida Statutes as follows:

“Vulnerable road user” means:

1. A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
2. A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
3. A person riding an animal; or
4. A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:
 - a. A farm tractor or similar vehicle designed primarily for farm use;
 - b. A skateboard, roller skates, or inline skates;
 - c. A horse-drawn carriage;
 - d. An electric personal assistive mobility device; or
 - e. A wheelchair.

There are many challenges and issues that are presented in the aftermath of a hit and run accident. In some instances, the at-fault driver and the at-fault vehicle are unfortunately never identified or located. Under these circumstances, the injured motorcyclist must then depend on the motorcycle and automobile insurance (if applicable) that will provide benefits to the injured motorcyclists. It is very helpful under these circumstances for the injured motorcyclist to have access to Medical Payment Insurance and Uninsured Motorist Insurance (UM). If the at-fault driver is located, it is helpful if the at-fault driver has Bodily Injury insurance in place. The policy limits for Bodily Injury Insurance can range from \$10,000 to \$1,000,000, or more. While a motorcyclist who is injured through no fault of his or her own is entitled to justice and compensation, the amount and type of insurance in place and available to the injured biker can and does have a significant impact on the pursuit and results of the civil case or claim on behalf of the injured biker.

In the aftermath of a hit and run accident causing injuries to a motorcyclist, there are

a myriad of legal matters and insurance issues to deal with. As such, it is typically to the benefit of the injured biker and the family to retain the services of an experienced Florida Motorcycle Accident Attorney.

CHALLENGES AND ISSUES ASSOCIATED WITH A HIT AND RUN MOTORCYCLE ACCIDENT

When a person is injured as a result of a hit and run accident, there are a number of legal and practical issues associated with the victim's injuries, medical bills, and other damages. Here are some of those issues and challenges to be considered:

Locating the At-fault Driver/Owner. One big challenge with a hit and run case is locating the driver/owner of the vehicle who fled the scene of the accident. In many accidents, there are no tag numbers obtained and no witnesses to the accident. If a tag number is obtained and there was significant property damage, there will be a good chance of locating the at-fault vehicle. If the at-fault driver or owner is located, police will interview the at-fault owner and driver and continue moving forward with the accident investigation. Unfortunately, many drivers who flee the scene of an accident fail to have insurance. Further investigation by the police and/or a Florida Motorcycle Accident Attorney will disclose the availability and amount of coverage in place for a motorcycle accident.

Insurance of At-Fault Driver/Owner. If the at-fault owner and driver are located and there is automobile insurance in place for the vehicle involved, an insurance claim can be pursued, even though the at-fault driver fled the scene of the motorcycle accident. While a driver generally has a duty to remain at the scene of an accident, the fact that the driver fled the scene does not mean that the automobile insurance will be nullified by these acts.

Uninsured/Underinsured Motorist Coverage. In a hit and run accident case, it is helpful if there is Uninsured or Underinsured Motorist (UM/UIM) coverage available to the injury victim. A hit and run motorcycle accident can result in the injury victim being qualified for a UM/UIM claim assuming that the at-fault driver/owner lacked BI insurance OR had BI insurance but lacked sufficient insurance (Underinsured) to fully compensate the victim for the injuries sustained as a result of the motorcycle accident.

Watching Out for Motorcyclists





MEDICAL TREATMENT AND FOLLOW-UP

WHERE SHOULD THE INJURY VICTIM RECEIVE MEDICAL CARE FOLLOWING THE MOTORCYCLE ACCIDENT?

When a person is injured as a result of a motorcycle accident, there are often a number of challenges in obtaining medical care. The type and availability of medical care will depend in part on the recommendations of the victim's medical providers, the severity of injuries, and the type of motor vehicle and health insurance in place.

The type of injuries sustained as a result of the motorcycle accident may include the following:

- Traumatic Brain Injury and Brain Damage;
- Musculoskeletal Injuries;
- Fractures;
- Shoulder, Arm, Wrist, and Hand Injuries;
- Hip, Leg, Knee, Ankle, and Foot Injuries;
- Neck and Back Injuries;
- Chest Injuries;
- Road Rash, Lacerations and Scarring;
- Facial and Eye Injuries; and
- Other Personal Injuries.

When a person is injured in a motorcycle accident, there is often a question or issue as to the selection of doctors and medical providers. Many motorcycle accident victims initially go to the emergency room or urgent care center for an evaluation and treatment of injuries.

Whether a person initially goes to an emergency room or not, the injury victim often has questions about where to seek and obtain follow-up medical evaluation and treatment. There are a variety of doctors in any given community who are available to treat an injured motorcyclist.

If a person is injured in an automobile or trucking accident, the following medical providers may end up providing treatment:

Fire Rescue/Paramedics/Ambulance. If the injuries appear to be acute and/or traumatic in nature at the scene of the motorcycle accident, an ambulance service or fire rescue service is often called to the scene of the accident to evaluate the personal injuries. Depending on the severity of the injuries, the injury victim may be transported to a local emergency room or airlifted to a trauma center for further evaluation and treatment.

Emergency Room. In most communities, there is an emergency room available to treat patients for personal injuries resulting from a motorcycle accident. In some communities, there is a specialized trauma center to attend the needs of severely injured patients following a motorcycle accident.

Pediatrician. When a child is injured as a result of a motorcycle accident, the child can obtain treatment through the primary care doctor or pediatrician. A pediatrician may be able to evaluate the child generally. However, a pediatrician typically is not trained to provide the ongoing specialized treatment and evaluation for traumatic injuries to a child following a motorcycle accident. If the injuries to a child require treatment beyond a visit or two, the pediatrician will often recommend that the injured child see a specialist.

Orthopedic Surgeon. If a person fractures a bone as a result of a motorcycle accident, the victim should seek evaluation and treatment from a local orthopedic surgeon if it is warranted. In addition to fractures, orthopedic surgeons also provide evaluation and treatment for sprains, strains, ligament injuries, and other musculoskeletal injuries.

Neurologist. The injury victim may seek treatment from a neurologist if there are head, back, neck, or other neurological injuries. While a neurologist does not operate or

repair fractures per se, a neurologist does generally provide treatment and evaluation for traumatic injuries of the body and head. Neurologists diagnose and treat pain associated with head, neck, back, and extremity injuries. A neurologist can help pinpoint or diagnose the cause or origin of the pain in the body and then set forth a treatment regimen including therapy, medications, and injections as necessary for the patient.

Pain Management. Many doctors train for additional years in the field of anesthesia and pain management. These doctors specialize in procedures that can be performed to assist the patient with pain relief as well as diagnosis of accident related injuries. Pain management is not warranted for every motorcycle accident patient. When warranted, this mode of treatment can be extremely beneficial for those accident victims who are having difficulty working or otherwise getting through their activities of daily living.

Neurosurgeon. Unlike neurologists and many medical providers, neurosurgeons focus the entirety of their practice on surgical candidates and cases. Neurosurgeons do not manage patients in a non-surgical manner. They leave this kind of treatment to other medical providers. If a patient needs surgery, a neurosurgeon or an orthopedic surgeon would usually be the best qualified medical provider for motorcycle accident related injuries.

Physiatrist/Physical and Sports Medicine Doctor. A physiatrist is a doctor who specializes in traumatic and sports related injuries. Physiatrists should not be confused with psychologists or psychiatrists, who treat the emotional and mental issues. The treatment and evaluation by a physiatrist or sports medicine doctor can significantly help the injury victim return to his or her active lifestyle depending on the severity of the personal injuries sustained in the motorcycle accident. Physiatrists implement a variety of treatment modalities depending on the patient and the type of injuries. Treatment by or through a physiatrist can include therapy, medications, and injections.

Physical Therapist. At the direction and order of a treating physician, a physical therapist can provide treatment and evaluation of an injury victim. Therapy can be most beneficial in helping the victim through injuries that do not require more complicated and involved treatment like surgery or injections.

Chiropractor. Many chiropractors provide a spectrum of care for both adults and children. Typically, chiropractors use conservative treatment methods in the form of spinal adjustments and physical therapy modalities to care for the injured victim. While a chiropractor cannot prescribe medications or perform surgery, the therapy provided by or through a chiropractor can be very beneficial and helpful to patients dealing with motorcycle accident related injuries. These include neck, back, and musculoskeletal

injuries. If an MRI or other diagnostic study shows a vertebral disc injury, ligament injury, or other injury requiring the care of a specialist, the injury victim, in many instances, can be treated concurrently by the specialist and the chiropractor or physical therapist.

As you can see, there are many considerations when selecting a doctor, therapist, or medical provider to help treat the injury victim. The selection of medical providers for treatment following an accident or injury can be complicated and confusing. It is often helpful to discuss the selection of doctors with the family physician, the other treating medical providers, friends, and others who are knowledgeable of the medical provider's background, reputation, and experience.

WHICH DOCTORS AND MEDICAL PROVIDERS ACCEPT MEDICAL PAYMENTS BENEFITS UNDER A MOTORCYCLE INSURANCE POLICY?

This is a question that is often posed by injury victims who have been in a motorcycle accident. When a person is injured in a motorcycle accident, the injury victim may qualify for benefits under a motorcycle insurance policy or an automobile insurance policy held by the injury victim or a resident family member. Not all medical providers in a particular community accept Med Pay benefits under an insurance policy. In fact, more medical providers do not accept such payments as compared to the medical providers that do. Currently in Florida, there is no list online or through a motorcycle insurance policy or otherwise that provides the names of the medical providers in a particular community that accept Med Pay benefits for a motorcycle accident.

How do I find out if a particular medical provider accepts Med Pay benefits? This is another good question. There are several ways in which you can make this determination. You can contact the medical provider directly and ask the assistant or the office manager if insurance benefits are accepted for payment. You can also ask a friend who may have been in an automobile accident where he or she got treatment and if the benefits are accepted by the medical provider. Alternatively, you can contact a Personal Injury Attorney for help and guidance regarding medical providers in the community that accept Med Pay and treat motorcycle accident victims.

A Florida Motorcycle Accident Attorney can let you know what resources and medical providers are available in the community that will treat a patient under Med Pay benefits. There is no legal requirement that any particular medical provider accept motorcycle insurance benefits to treat a patient. In fact, some medical providers have made a business decision to specifically reject or not accept benefits under the Med Pay policy or treat accident victims at all.

Some of these medical providers believe that this type of work or medical care is beneath them or is simply a hassle, especially if litigation may result. Other medical providers who accept Med Pay benefits are more understanding and accept this form of payment with the knowledge that the person needs the medical care and oftentimes has no other source of payment. Furthermore, some medical providers are just more comfortable treating accident victims than others.

SHOULD THE INJURY VICTIM RECEIVE TREATMENT FROM A PRIMARY CARE DOCTOR OR OTHER HEALTH CARE PROVIDER FOLLOWING THE MOTORCYCLE ACCIDENT?

When a person is involved in a motorcycle accident, there is often a decision to be made regarding follow-up care and treatment. If a person has access to Med Pay (Medical Payment Coverage) from his/her motorcycle policy, then the injury victim should seek medical treatment from providers who accept Med Pay as a payment source of accident related medical care. Med Pay benefits work differently than your standard health insurance policies. Following a motorcycle accident, the following question is often posed to us as Florida Motorcycle Accident Attorneys:

Should I seek follow-up care and treatment with my primary care physician?

The answer to this question is not so simple. The best way to answer this question is to state in lawyerly fashion – “It depends.” There are several questions that should be answered regarding this issue including the following:

- Does the primary care physician accept Med Pay or my health insurance as a paymentsource after an accident?
- Does the primary care physician have experience treating motorcycle accident victims?
- Does the primary care physician have a basic knowledge of motorcycle insurance claims?
- Does the primary care physician work with personal injury attorneys in terms of his or her willingness to provide consultations with the attorney, testify in deposition or court on behalf of the victim/patient, provide copies of the patient’s records and billing ledgers to the attorney so that those items can be provided to the insurance companies?
- Does the primary care physician typically refer out or defer treatment to other specialists regarding motorcycle accident injuries?

Typically, the primary care physician will either decline treatment for the motorcycle accident victim or just provide limited treatment. In Florida, there is no legal or insurance requirement that the accident victims obtain initial or follow-up care from his or her primary care physician. Under most motorcycle insurance policies, there is no requirement that the referral be made by the primary care physician to see a specialist like a neurologist, orthopedist, or pain management doctor. In other words, a motorcycle accident victim can directly make an appointment with a specialist, who accepts Med Pay payments, without having to “jump over hurdles” by getting a referral from a primary care physician or another doctor.

IS THERE A LIST OF DOCTORS WHO TREAT MOTORCYCLE ACCIDENT INJURY VICTIMS?

When a person is injured as a result of a motorcycle accident, the injury victim will often require follow-up care after a visit to a local emergency room. Injury victims can obtain medical care and have it covered through private health insurance and/or Medical Payment (Med Pay). If the motorcycle insurance policy provides for Med Pay coverage, this type of coverage is typically primary to that of health insurance. Because of this, it is advisable for a person to seek or obtain medical care and treatment through a doctor or medical provider who accepts Med Pay insurance as a source of payment.

Most health insurance companies have an online list of medical providers that accept its health insurance coverage. Companies like Blue Cross/Blue Shield, CIGNA, United Health, and AETNA have databases of doctors that can be used by plan members to select a medical provider. Unlike many health insurance companies who have such lists, medical providers who accept Med Pay insurance as a payment source are not contained or organized in any list. While there are major insurance companies like State Farm, Allstate, GEICO, and Progressive that issue motorcycle insurance policies, there is no such list that contains medical providers who accept motorcycle insurance as a source of payment.

Some medical providers accept Med Pay as a payment source for a motorcycle accident injury and some medical providers do not. Following an accident, it is important to get quality medical care from a treating physician/medical provider that accepts Med Pay as a payment source. It is also important for the medical provider to know and otherwise understand the challenges and needs that the injury victim has with respect to careful documentation of the motorcycle accident related injuries within the medical reports or records. This is so there is an evidentiary basis to prove whether the injuries were caused by the underlying accident.

CAN A CASE STILL BE PURSUED ON BEHALF OF AN INJURY VICTIM IF THERE IS NO FIRE RESCUE EVALUATION OR EMERGENCY ROOM VISIT?

Following a motorcycle accident, many injury victims are immediately treated by paramedics and/or evaluated at a hospital emergency room. In other instances, there may be a days of delay in seeking medical attention for injuries caused by the accident. As Florida Motorcycle Accident Attorneys, we are often asked the following question:

If there is a delay in medical treatment following an accident causing injuries, can a case or claim still be pursued on behalf of the injury victim?

The simple answer this question is "Yes." The case can still be pursued even if medical care is not provided at the accident scene and/or at the emergency room. While it makes sense from both a medical and legal standpoint to obtain timely medical treatment, there is no requirement in place in Florida that an injury victim immediately be seen by a doctor, clinic, paramedic, or emergency room in order to be able to pursue a case or claim for compensation. Compensation includes money for medical bills, pain, suffering, and other related damages associated with the motorcycle accident.

Because of the complexities of claims, laws, and negotiations involving injury cases, an injury victim and/or his family should contact a Florida Motorcycle Accident Attorney for advice, consultation, and legal representation.

CAN A CASE STILL BE PURSUED ON BEHALF OF THE INJURY VICTIM IF THE POLICE OFFICER IS TOLD THAT THERE WERE NO INJURIES RESULTING FROM THE FLORIDA MOTORCYCLE ACCIDENT?

In most motorcycle accident cases, the local sheriff, police department and/or the highway patrol are called to the scene of the accident. The responding officer will assess the accident scene and take statements from the drivers and witnesses. One such question that is often asked by the police officer is the following:

Were you hurt or injured as a result of the accident?

If a person responds "no" and declines any help, assistance, or evaluation from fire rescue or a local emergency room, does the person waive legal rights to pursue a

MEDICAL TREATMENT AND FOLLOW-UP

claim for personal injury? The simple answer to this question is “No.” In some cases, a person involved in a traumatic motorcycle accident does not immediately realize or appreciate the injuries that he or she may have sustained. Furthermore, with many neck, back, and extremity injuries, the signs and symptoms associated with such injuries often do not appear until a period time after the motorcycle accident. Perhaps, the signs and symptoms show up that night or the following morning.

Once a person realizes or feels the effects of the personal injuries from a motorcycle accident, immediate medical care should be obtained from an emergency room, urgent care center, or other medical provider. Insurance companies will question or closely evaluate a claim that does not result in immediate medical care. However, many claims and cases are settled or result in a significant jury verdict even when the person does not immediately complain of pain at the accident scene.

Watching Out for Motorcyclists





MOTORCYCLE PROPERTY DAMAGE – LEGAL RIGHTS TO COMPENSATION

MOTORCYCLE PROPERTY DAMAGE - REPAIRS AND RECOVERABLE DAMAGES

A motorcycle owner feels a certain connection to his or her motorcycle. While a motorcycle is not a living, breathing being, a motorcycle owner does feel the impact from an emotional standpoint when their motorcycle is damaged in an accident. Some motorcycle owners spend countless hours working on or having others working on their motorcycle to improve the performance, operation, and look of the motorcycle. When a motorcycle is damaged as a result of an accident, many bikers just do not feel the same about it afterwards.

While there is a certain emotional connection and affinity for the motorcycle, the State of Florida and most other states do not recognize any property damage claims beyond the total loss (if applicable), repairs, and diminished value (if applicable). In other words, a motorcycle owner cannot collect pain, suffering, mental anguish, or loss of enjoyment of life just because a motorcycle is damaged as a result of the crash like you could if you were injured.

As for the property damage or the repairs, there are generally three kinds of insurance that will pay for or cover the repairs.

Property Damage Insurance Coverage. Every registered motor vehicle owner in the State of Florida must carry Property Damage insurance. But motorcycles are not required to have this type of insurance. This insurance will cover damages to the other party if it can be shown that the motor vehicle owner or the permissive driver of the motor vehicle was negligent. For instance, let's say that a person is driving a SUV

that makes a careless left hand turn into the path of travel of a motorcyclist. There is a crash and the motorcycle is damaged. The estimated cost of the repairs is \$3,000 and the motorcycle is worth about \$10,000. Under this fact scenario, the repairs should be paid by the at-fault driver's property damage adjuster.

Collision Insurance Coverage. In the State of Florida, Collision Insurance for motor vehicle and motorcycle owners is optional. As such, many motor vehicle and motorcycle owners do not elect to have Collision Insurance because the premiums are higher with this coverage in place. Most insurance agents and most Florida Motorcycle Accident Attorneys recommend that a motorcyclist obtain Collision Insurance. For instance, let's say that a person driving a motor vehicle rear ends the back end of a motorcycle. The driver is issued a citation and even admits that he was at-fault for the crash. Unfortunately, the driver allowed his insurance to lapse for non-payment. While the driver is technically and legally responsible for the damage to the motorcycle, it may prove to be difficult to collect the funds or money from the driver who did not have the sense or the funds to pay for his insurance premium. While it is not fair, the motorcyclist may be put into a bind about how the repairs will be paid for. Under these circumstances, it would be very helpful to have Collision Insurance which will cover or pay for the damages/repairs to the motorcycle regardless of fault and regardless of the availability of insurance for the at-fault driver.

Comprehensive Coverage. In the State of Florida Comprehensive Insurance would cover repair or total loss of the motorcycle that was caused by something OTHER than an accident or crash. The covered events or incidents can include fire, theft, vandalism, weather, and other incidents. It is important to read and understand the coverage language in the insurance policy when purchasing the insurance and later when trying to apply or utilize the benefits to cover the loss, damage, or repairs.

ASSESSMENT OF MOTORCYCLE DAMAGE: REPAIRS, DIMINISHED VALUE, AND TOTAL LOSS CLAIMS

Following a motorcycle accident, the motorcycle owner is faced with a number of issues and challenges. While immediate medical care and medical stability take precedence over other matters, attention will need to be given to the damage to the motorcycle. Since many motorcycle accidents involve a collision with a much bigger vehicle or a fixed object like a guardrail, the damages to the motorcycle can be quite significant. One issue that arises in many motorcycle claims is the decision to repair the motorcycle or total loss of the vehicle. Generally, insurance companies will limit the total loss of the motorcycle to situations in which the repairs exceed 80% of the value

of the motorcycle. Under these situations, the insurance adjuster will likely deem the motorcycle a total loss even though the motorcycle can be repaired at a lower amount than the value of the motorcycle. While many motorcycle owners would rather have the motorcycle fixed than put it at a total loss, the insurance company will typically take a tough stance on these total loss decisions. These decisions typically are not subject to judicial intervention, nor worth the time, effort, or expense to bring the action through filing a lawsuit.

If the motorcycle is repaired, the motorcycle owner is then left with a motorcycle that never seems right or doesn't ride the way it did prior to the crash. In certain circumstances, a motorcycle owner can seek what is called "Diminished Value" damages for the motorcycle. In other words, the motorcycle, as repaired after the accident, is not worth as much as the motorcycle would be if the motorcycle was never damaged. It should be noted that Diminished Value claims are typically only compensable by the property damage coverage of the at-fault driver's automobile insurance policy. If the motorcyclist had collision insurance, Diminished Value is usually not covered as a part of the motorcycle insurance policy.

How does one establish the Diminished Value of a motorcycle? This is an excellent question. It is helpful to have an appraisal completed of the motorcycle following the motorcycle accident. An appraiser or expert in the field of motorcycle sales can evaluate the repair bill, make, model, mileage, and general market for the motorcycle as it exists after the motorcycle accident. The appraiser/expert can then compare the current value of the motorcycle and compare it to the market for a similar motorcycle that has not been wrecked. The difference between these two figures constitutes the Diminished Value. It should be noted that the diminished value determination by the insurance company may differ from that presented by the selected appraiser/expert. The diminished value claim can be negotiated or litigated as necessary to get the matter resolved.

Insurance coverage and the intricacies of repairs, total loss, and Diminished Value in motorcycle accident claims can be quite confusing. As such, a motorcycle owner should seek guidance, advice, and legal representation from a Florida Motorcycle Accident Attorney on these and other issues including those related to personal injury, medical bills, and compensation/settlement.

COMPENSATION FOR DAMAGE TO A CUSTOMIZED BIKE / MOTORCYCLE

Following a motorcycle accident, there are a number of issues and questions that arise regarding the repair, diminished value, and total loss of the motorcycle. It can be quite confusing as to which insurance company to deal with and what will actually be covered with respect to the motorcycle damage.

What if my motorcycle is customized? Can I get the value of my customized parts or paint? Like many issues that arise in the aftermath of a motorcycle accident, the answer to these questions depends on the facts, circumstances, and insurance coverage language.

Some insurance carriers will offer you a stated value policy which means in the application for insurance, you and the company agree to the replacement value of the motorcycle and you will pay the premium associated with the value. The higher the value, the higher the premium, naturally. Other policies allow payment for "Betterments." Betterments are also known as enhancements. This would include customized paint, additional chrome, additional lighting, larger wheels and tires etc. Most insurance policies that allow for coverage beyond the fair market value require you to identify the customized parts and notify the insurance company of the value of the parts when you apply for the insurance. Some insurance policies will cover for Betterments without an additional premium as long as you can prove (with receipts) the value of the add-on items such as custom paint, exhausts, lights, seats etc. You should review your motorcycle insurance policy with your agent periodically to be sure that the money you spend customizing your motorcycle is protected by your motorcycle insurance policy.

When pursuing a property damage claim against the automobile insurance company for the at-fault driver, there may be resistance and reluctance on the part of the insurance company to pay for damages associated with the Betterments, extras, or improvements to the custom motorcycle. Insurance adjusters are difficult to deal with even on a case involving a fairly standard motorcycle property damage claim.

It is abundantly clear that the owner of the motorcycle has a great connection to the motorcycle and a greater interest in seeing it rightfully repaired or replaced than any insurance company will. It is often helpful to have legal representation to properly and fully pursue a property damage claim, collision claim, or comprehensive insurance claim on behalf of the motorcycle owner.

WHAT IS A DEDUCTIBLE FOR PROPERTY DAMAGE CLAIMS?

Most coverages for property damage have deductibles. Deductibles apply whenever a claim is made for property damage. This means you will pay the amount of the selected deductible agreed upon when you purchased the insurance before the insurance company will pay a dime. If the damage does not exceed the deductible amount, the insurance pays nothing. If the amount is greater than the deductible, the insurance company will pay the amount over the deductible you are required to pay. For each occurrence that causes damage to your motorcycle, \$250 is the most common deductible. Some deductibles can top \$1,000. Some policies have no deductible. By example, if you have a \$1,000 deductible and the cost to repair your motorcycle is \$950, you will pay for the entire repair. On the other hand, if you have no deductible, the insurance company will pay the full price of the repair.

Deductibles are a matter of cost. It costs more for insurance if there is no deductible and costs less if there is. The higher the deductible, the lower the premium. The best way of looking at a deductible is this, how much more money do I want to spend repairing my motorcycle after paying for my premiums? The authors recommend not adding insult to injury and to select the lowest deductible you can afford. The authors also recommend that you keep records of all maintenance and betterments added to the motorcycle so that you will be prepared to negotiate the fair market value with your claims adjuster should the need arise.

CAN A BIKER COLLECT PAIN, SUFFERING, MENTAL ANGUISH ASSOCIATED WITH THE DAMAGE TO MOTORCYCLE ONLY?

For many bikers/motorcyclists, the motorcycle is an important part of his or her life. A good deal of time, money, effort, and heart are often poured into the purchase, maintenance, and repair of a motorcycle. Many motorcycles are treasured and prized by the owner. When there is damage or a total loss to the motorcycle, it is felt on an emotional level by the owner and can lead to a feeling of a loss of sorts. Certainly, it is understandable when a motorcycle owner is upset when, through no fault of their own; the motorcycle is damaged or totaled out due to the negligence of another person. While the feelings and emotions are genuine and heartfelt, the legal question at hand is whether there is recognizable compensation available under Florida law for these damages or losses.

Sorry to say but the simple answer is, "No." A motorcycle owner cannot collect, under Florida law, pain, suffering, and loss of enjoyment of life damages solely due to the damage of the motorcycle. For example, let's say that Joe Smith owns a motorcycle. A driver of a motor vehicle rear ends the back of Joe's motorcycle. The driver is issued a citation and the motorcycle is fixed. The repair bill was \$1,500. The insurance company for the at-fault driver paid the \$1,500. Joe Smith did not suffer any personal injuries at all and did not seek any medical treatment. Joe Smith, understandably, was a bit distraught over the damage to his motorcycle which he had owned for 5 years. The motorcycle was in excellent condition prior to the crash. Under this fact scenario, Joe Smith would not be entitled to any pain, suffering, or loss of enjoyment of life damages. There may be an additional claim for the Diminished Value of the motorcycle. For instance, if the motorcycle prior to the crash had a market value of \$10,000 and now has a market value of \$8,000, a Diminished Value claim could be pursued for \$2,000; however, this claim only relates to the loss of value of the motorcycle and not to any emotional loss of the motorcycle owner.

If a motorcyclist suffers personal injuries as a result of the motorcycle accident and seeks medical treatment for the same, then a claim or case could be pursued for what are called "non-economic damages" which include pain, suffering, mental anguish, and loss of enjoyment of life. The pursuit of a personal injury claim or case can be quite complicated. Even when the injuries appear to be clearly related to the motorcycle accident, the insurance companies still find ways to challenge the injuries or merely take a tough stance just to put more pressure on the motorcyclist to accept a settlement that is not in line with the reasonable value of the claim or case.

Watching Out for Motorcyclists





INSURANCE ISSUES AND COMMON QUESTIONS

DOES THE INJURY VICTIM NEED TO REPORT THE MOTORCYCLE ACCIDENT TO HIS OR HER MOTORCYCLE INSURANCE COMPANY OR AUTOMOBILE INSURANCE COMPANY?

When a person suffers a personal injury as a result of a Florida Motorcycle Accident, there is often a question whether the accident needs to be reported to the injury victim's automobile/motorcycle insurance company. The simple answer to this question is "Yes." When a person owns or operates a motorcycle and takes out an insurance policy, a contract is formed between the insurance company and the insured driver or owner. Under the terms of most automobile insurance policies, there is a duty to timely notify the insurance company of any claims that they may be liable to pay. This means that the insured person must cooperate and provide timely information to the insurance company regarding any motorcycle accidents that might ultimately require the payment of monies under the insurance policy. Because these or similar provisions are contained in most insurance contracts, an injury victim must timely report accidents to his or her insurance company. This does not necessarily mean that the motorcycle accident has to be reported within 24 or 48 hours. But, it does mean that the accident must be reported in a timely manner so that the insurance company is not prejudiced by the investigation or future handling of any claims being made under the policy.

In many instances, the injury victim may have an adversarial claim or case against his or her own insurance company. In other words, there is a fight or dispute between the injury victim and his or her own insurance company regarding the amount of payment or compensation to be made under the insurance policy. Because of this,

initial statements and any subsequent information that may be provided to an injury victim's insurance company can have a great impact on the claim or case itself.

When a person is injured as a result of a motorcycle accident, it is often helpful to have the advice, consultation, and legal representation from a Florida Motorcycle Accident Attorney. It is important to first consult with an attorney about the rights of the injury victim and the responsibilities of the at-fault driver and the involved insurance companies BEFORE providing a recorded or even unrecorded statement to anyone. If the injury victim retains the services of a Florida Motorcycle Accident Attorney, the claim can be reported by the attorney to the insurance company. This can, in turn, reduce the anxiety and uncertainty of the injury victim by providing the initial information about the accident to the insurance company while at the same time having to deal with injuries or the death of a loved one resulting from a motorcycle accident.

Insurance companies and insurance adjusters have a duty to document the file, investigate the claim, and pay out benefits when the insurance company determines that the medical bills and expenses are reasonable and necessary and related to the automobile accident.

One should be mindful that an insurance adjuster's duty or allegiance is not to the victims, but to the insurance company. While insurance adjusters should act in good faith and should handle a claim with due diligence and professionalism, the insurance adjuster reports to the insurance company and not to the injury victim.

SHOULD THE INJURY VICTIM GIVE A STATEMENT TO THE OTHER DRIVER'S INSURANCE COMPANY?

After a Florida Motorcycle Accident, injury victims are often faced with many challenges and issues. It is common for the insurance company for the at-fault driver to contact the injury victim to obtain a statement and other information regarding the victim's injuries. This brings about the following question:

Should I give a statement to the insurance company for the at-fault driver?

Most attorneys who handle personal injury cases will advise against giving such a statement until the injury victim consults with a Florida Motorcycle Accident Attorney. There is no legal duty to provide a statement to the at-fault driver's insurance company in most instances. There are some exceptions to this general rule. Because of the

complexities of motorcycle accident and injury laws and the nuances of insurance and compensation, it is important for a person to seek advice and consultation from a Florida Motorcycle Accident Attorney following an accident. Most attorneys handle these cases on a contingent fee basis. This means that if there is no recovery, no attorney fees are paid. Furthermore, most Florida Motorcycle Accident Attorneys will provide a free consultation to the injury victim.

SHOULD THE INJURY VICTIM FOLLOW THE ADVICE OF HIS OR HER AUTOMOBILE / MOTORCYCLE INSURANCE COMPANY FOLLOWING THE FLORIDA MOTORCYCLE ACCIDENT?

A basic but important question is as follows:

Should the injury victim follow the advice of his or her insurance company after the motorcycle accident?

This is an excellent question that does not have an easy answer. The best way to answer this question is to discuss how an insurance company becomes involved after a Florida Motorcycle Accident. There are two different ways in which an insurance company can be involved in a claim or case following a Florida Motorcycle Accident.

You Were At-fault for the Motorcycle Accident.

If you were at-fault for the motorcycle accident and you have motorcycle insurance in place, your insurance company (depending on the type of insurance you purchased) may provide you with coverage for damages caused by your negligence in the accident, depending on the type and extent of coverage you have. Under these circumstances, it may be helpful to get advice and guidance from your insurance company because the insurance company is the entity that may be providing payment for the damages you caused in the accident. Your insurance company may also be responsible for providing you with legal representation to defend your interests where it appears likely that a claim will be brought against you.

For instance, if it is a "Property Damage only" case, your insurance company should be in contact with the other driver or the other insurance company to provide arrangements for the repair and/or total loss of the other vehicle. Your company will advise you as to the status of the claim and in most instances will advise you when the claim is resolved. When there are injuries that result from an accident and you have Bodily Injury coverage, your insurance company will monitor the medical treatment of

the injured person, handle correspondence and communication with the other person and/or his or her attorney, and make efforts to resolve the case.

If a lawsuit is filed for personal injuries and you had Bodily Injury insurance coverage, then your insurance company, under the terms of the insurance contract, will provide you with an attorney to represent you in litigation. This attorney will provide advice, consultation, and legal representation. At times, it may be helpful to consult with a Florida Motorcycle Accident Attorney separate from the insurance company to make sure that the insurance company is representing your best interests.

Another Driver Was At-fault for the Accident.

When another person is at-fault for a motorcycle accident, you should be wary about any communications and conversations with your insurance company and with the other person's insurance company. Unlike situations when you are at-fault, you will not be provided with an attorney to represent your interests when you have a property damage claim and/or personal injury claim to pursue for damages to your motorcycle and/or your personal injuries against another party.

When a person is injured in a Florida Motorcycle Accident, your insurance company can often be a potential adverse party to the case. For instance, if you have an injury claim against your Uninsured or Underinsured Motorist (UM/UIM) policy and the company refuses to handle, adjust and settle the claim reasonably, this kind of case may result in a lawsuit against the UM/UIM carrier (i.e., your own insurance company). Because of the potential for conflict and the potential of a lawsuit, it is best to hire a Florida Motorcycle Accident Attorney to handle communications, correspondence, and negotiations with the various insurance companies.

WHAT ARE THE INSURANCE SOURCES OF PAYMENT FOR MEDICAL BILLS WHEN A PERSON IS INJURED IN A FLORIDA MOTORCYCLE ACCIDENT?

Following a Florida Motorcycle Accident, an injury victim often faces many challenges and hardships including the payment and responsibility for medical bills. One issue or challenge that is common in most cases is to understand the available insurance coverage to compensate the victim for the motorcycle accident-related injuries. When a person suffers an injury, there may be insurance that is available to help pay for some or all of the medical bills. The available insurance depends on the negligence

or fault of the parties, the type of insurance coverage obtained by the injury victim, the type of insurance obtained by the at-fault driver, the type of insurance obtained by the at-fault vehicle owner, and other factors. If a person qualifies for insurance benefits, the insurance companies involved in evaluating the claims will require proof of the personal injuries including, but not limited to, medical bills, medical expenses, photographs, videos, diagnostic testing, medical records and reports, and other evidence. The sources of payment of the medical bills may include one or more of the following insurance coverages:

The policy limits for the Med Pay portion of an insurance policy can range from \$1,000 to even \$20,000 or more. It should be noted that Med Pay (Medical Payment) coverage is optional for motorcycles and motor vehicles insured in the State of Florida. As such, many Florida policies are issued without Med Pay coverage because of the extra premium costs associated with such coverage.

Health Insurance. When a person is injured due to a Florida Motorcycle Accident, a person's health insurance coverage may also provide benefits, but it is typically coverage that applies only after Med Pay coverage make payment, if available. There are limitations and restrictions when dealing with health insurance coverage. Furthermore, many health insurance plans require that a person treat in-network and require that a person get a referral from the primary care doctor to see a specialist. While an injury victim's health insurance carrier typically becomes the primary payer of the medical bills once Med Pay benefits have been exhausted, it is worth noting that such paid expenses can still be claimed in any legal proceedings since most health insurance carriers have subrogation/lien rights. This means they are entitled to reimbursement from the at-fault parties or their insurance carriers for the medical expenses they had to pay toward the injured person's medical care and treatment.

BI Coverage (Bodily Injury). BI coverage from the at-fault driver may also be available to cover medical bills. It should be noted that Med Pay, and motorcycle Med Pay and health insurance pay medical bills as they are submitted. Unlike these types of coverage, BI coverage will only pay a one-time settlement after treatment to resolve the case for a lump sum, in exchange for securing a release by the victim. BI coverage typically is not paid out over a period of time or by installments.

UM/UIM (Uninsured Motorist/Underinsured Motorist Coverage). For those who carry UM/UIM coverage on their own insurance policies, this coverage typically becomes available where the at-fault driver has little or no Bodily Insurance coverage to cover the injured person's injuries and damages. Like BI coverage, UM/UIM coverage typically will only make a one-time payment or lump sum settlement

to resolve a case. In many cases, UM/UIM benefits or payments are used to pay medical bills.

****Note:** Given the number of uninsured and underinsured drivers operating motor vehicles on Florida's roadways, UM/UIM coverage the authors highly recommended for those Floridians who do not already possess such coverage.

Umbrella or Excess Coverage. Some companies and individuals carry Umbrella or Excess Coverage in place which provides for additional liability insurance coverage over and above the applicable Bodily Injury insurance limits. As with many individuals who have Umbrella Policies of Coverage which help protect their assets when they have exposure to claims that are seeking damages in excess of their underlying Bodily Injury insurance coverage limits, many commercial entities such as trucking companies and large businesses with fleet trucking services also carry Umbrella or Excess Coverage for the same reasons of protecting resources and limiting personal or corporate exposure to excess judgments. When pursuing a claim or case for personal injuries, it is important to know all of the policies of insurance, including Umbrella or Excess Coverage, that may provide for benefits to the injury victim.

Self-Insurance. Another type of coverage or source of payment is called "Self-Insurance." This kind of coverage or source of payment is a bit misleading as it really is not insurance at all. It is merely a designation of a company's responsibility for payment both under and over certain insurance coverages. For larger companies like Wal-Mart, Coca Cola, and Home Depot, the amount of insurance is less of a factor because the companies have sufficient assets to cover all types of injury claims, including ones involving catastrophic injuries and wrongful death. Often when you see a business or company that is self-insured, the company has done so for the purpose of exercising greater control over the hiring of its drivers, controlling premiums and the payment of claims. Insurance companies underwrite coverage based on their risk, and often an insurance company will charge higher premiums for companies who hire less experienced drivers or drivers with poor driving histories. A company that chooses to be self-insured under a self-insured retention policy up to a certain level of liability, means the company has elected to retain the risk of liability claims up to a certain limit. Self-Insurance also helps certain smaller business save money on liability insurance premiums.

WHAT IS “FULL COVERAGE” UNDER A FLORIDA AUTOMOBILE INSURANCE POLICY?

Clients and potential clients often inform us that there is “Full Coverage” in place for a particular Florida Motorcycle Accident. There is really no such thing as “Full Coverage” insurance. In the State of Florida, there is minimum insurance coverage required and then optional insurance coverage. Florida requires that a motor vehicle owner have two types of insurance coverage as follows:

Property Damage Insurance. This insurance will cover the vehicle repairs or total loss of the damaged motor vehicle. For example, let’s say that Bill Jones is a victim of a motorcycle accident. Assuming that the other driver was at-fault, Bill Jones can get his motorcycle repaired or can get the total loss value of his vehicle under the at-fault driver’s Property Damage coverage (assuming the at-fault driver or owner carried that type of coverage). Bill Jones could also utilize his own Collision coverage for the repairs or total loss if he carries such coverage.

The types of insurance coverage available for purchase for a motorcycle registered in the state of Florida can include the following.

- Med Pay (Medical Payment Coverage);
- Property Damage;
- Collision/Comprehensive;
- BI (Bodily Injury Insurance Coverage);
- UM (Underinsured or Uninsured Motorist Coverage); and
- Umbrella or Excess Insurance Coverage.

In many instances, a person who is in a Florida Motorcycle Accident does not understand or realize the extent of the available insurance coverage. When purchasing insurance, it is important for a person to make sure that there is a clear understanding of the amount and the type of coverage available. A Florida Motorcycle Accident Attorney can advise a person as to what insurance coverages are available for a vehicle and what is advisable as to the amount and type of automobile insurance coverage.

HOW DOES FLORIDA “NO-FAULT” AUTOMOBILE INSURANCE LAW WORK WITH A MOTORCYCLE ACCIDENT?

There is a confusing concept out there called the Florida No-Fault Law. This law applies to Florida Automobile Accidents but does not apply to Florida Motorcycle Accidents. That’s right the rules, laws, and requirements for compensation are different for motorcycle injury victims. Most Bodily Injury insurance adjusters who handle car accident claims also handle motorcycle accident claims. But these adjusters generally do not evaluate the personal injury cases on the same criteria from a damage standpoint because the law is different.

Pain and Suffering Damages in a Motorcycle Accident Case. One of the main components of the Florida No-Fault Law deals with entitlement to compensation for pain and suffering damages. In Florida, a motor vehicle injury victim is only entitled to pain and suffering damages if the victim suffers a “permanent injury, permanent scarring, or permanent loss of an important bodily function.” This is often referred to as the “permanency threshold” in Florida.

THIS THRESHOLD DOES NOT APPLY TO A MOTORCYCLE ACCIDENT CASE. In other words, a motorcycle accident victim is entitled to pain and suffering damages from the start. There is no requirement that any of their injuries are permanent or permanently impaired an important bodily function in order to recover damages for their injuries. While this is an important legal distinction, it has little significance in a motorcycle accident case. This is because the injuries are usually more serious than in a car accident and “road rash” often leads to permanent scarring. It is however, significant to the adjuster who cannot challenge your pain and suffering claim like they do in automobile accident claims. Therefore they recognize the motorcycle accident claim is more valuable than an automobile accident claim from the start.

Section 627.737 (2), Florida Statutes - Tort Exemption - Limitations on Right to Damages- provides as follows:

In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730 - 627.7405 (i.e., the injured victim receives PIP benefits to help cover medical treatment/expenses), or against any person or organization legally responsible for her or his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury,

sickness, or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the injury or disease consists in whole or part of:

- a. Significant and permanent loss of an important bodily function.
- b. Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- c. Significant and permanent scarring or disfigurement.
- d. Death.

The Florida No-Fault Law* is confusing. Furthermore, the related laws, rules, and regulations associated with Florida Motorcycle Accidents are also confusing. Insurance companies are well represented by claims adjusters and attorneys. You should be well represented to make sure that your rights are protected and enforced.

HOW DO MEDICAL BILLS GET PAID AFTER A MOTORCYCLE ACCIDENT?

The most common way for medical bills to be paid following a motorcycle accident is through the motorcyclist's health insurance. If the biker does not have health insurance, hopefully, there is some sort of medical payment coverage (Med Pay) on the motorcycle insurance policy. If that is not the case, then the only way to get the bills paid without any insurance is to seek damages from the at-fault driver's Bodily Injury carrier. If the at-fault driver does not have Bodily Injury coverage, then the motorcyclist has no avenue for recovery. Therefore, it is incumbent upon all motorcycle riders to purchase Uninsured/Underinsured (UM/UIM) motorist coverage, so there is at least one avenue to recover for their medical bills and injuries.

THE VALUE AND IMPORTANCE OF MED PAY (MEDICAL PAYMENT) COVERAGE

In the State of Florida, insurance regulations as to "motor vehicles" are quite rigid and regulated. Every registered owner of a "motor vehicle" is required to have Property Damage insurance and PIP (Personal Injury Protection) insurance. Property Damage insurance will provide coverage for the payment of repairs or the total loss of a vehicle if the insured person is at-fault. For instance, if the other driver is at-fault for the crash, you can file a claim for the damages to the motorcycle under the driver's

Property Damage insurance. You cannot file a claim under your own Property Damage insurance. It is important for a motorcycle owner, prior to the motorcycle accident, to purchase Med Pay insurance coverage which will pay for the medical bills related to the motorcycle accident regardless of fault.

It should be noted that Med Pay insurance coverage in the State of Florida is optional for owners of motor vehicles and owners of motorcycles. Since there is no mandatory PIP coverage for motorcycle owners, many motorcyclists will not have any medical coverage for injuries suffered as part of a motorcycle accident. Most Med Pay, otherwise known as Medical Payment, insurance policies cover \$1,000 up to \$100,000 worth of medical bills. This coverage can help out with the bills that accrue up front that are not otherwise covered by health insurance or other sources of payment. If you do not have health insurance, the authors recommend that you purchase as much Med Pay coverage as you can reasonably afford.

When a motorcyclist suffers personal injuries as a result of the negligence of another driver, one may think that the at-fault driver's insurance company will step up right away and begin paying the medical bills on behalf of the insured motorcyclist. It just does not happen this way. Medical bills are only paid up front or within a reasonable time after submission if the injured motorcyclist is covered under a Med Pay insurance policy for the motorcycle that was involved in the crash.

Assuming that the at-fault driver has Bodily Injury (BI) insurance coverage, this type of coverage may ultimately pay for the out of pocket medical bills of the injured motorcyclist. However, this usually only occurs at the end of your recovery and the BI adjuster will typically only make a one-time payment in the form of a final settlement. As such, an injured motorcyclist may have mounting outstanding bills and out of pocket expenses prior to the time of the settlement.

As you can see, insurance coverage issues can be quite confusing especially for claims involving motorcycle accident injuries. To better understand and navigate through this system, it is helpful to have legal representation from an experienced Florida Motorcycle Accident Attorney.

WHO IS RESPONSIBLE FOR PAYING HOSPITAL AND ER BILLS RESULTING FROM A FLORIDA MOTORCYCLE ACCIDENT?

When a person is injured in a Florida Motorcycle Accident, hospital/emergency room care is often required for the accident related injuries. Many injury victims do not

understand the process and responsibility of payment for medical bills related to a motorcycle accident.

There may be different sources of payment that may be utilized to cover hospital expenses following an accident. Furthermore, hospitals charge different rates and provide different write-offs depending on the source of payment and financial resources of the patient. When available, private health insurance and Med Pay coverage will be the primary sources of payment for accident related medical expenses, including, but not limited to those incurred at the initial ER visit or hospitalization. There may be limits however, under the applicable health insurance or motorcycle insurance policy.

If a hospital runs any tests including CT scans, MRI scans, and/or laboratory work, the associated medical expenses for the hospital or ER visit can be quite substantial. Because of this, a good portion of the motorcycle insurance benefits (if there are any in place) can be spent at the initial hospital visit. Thereafter, the accident victim will need follow-up care from medical providers in the community. If the person has health insurance, there should be no problem seeking and covering the costs associated with additional medical care. It can be quite challenging to obtain medical care in the community, however, if the person does not have health insurance. The payment sources for hospitals, emergency rooms, and medical care following accidents can be quite confusing and complicated. It is important to consult with a Florida Motorcycle Accident Attorney regarding medical bills, medical coverage, damages, compensation, and other associated concerns.

SHOULD THE INJURY VICTIM TREAT THROUGH HEALTH INSURANCE OR MOTORCYCLE INSURANCE FOLLOWING A FLORIDA MOTORCYCLE ACCIDENT?

When a person is injured as a result of a Florida Motorcycle Accident, there are often questions concerning how medical bills will be paid. Will medical bills be paid through the injury victim's motorcycle insurance or health insurance? The answer to this question will depend on the availability of Med Pay coverage, the type and amount of coverage obtained by the victim or vehicle owner, the policy language, and other factors. If there is Med Pay available to the injury victim, this coverage is typically primary to other types of health insurance coverage. In other words, a person should first use Med Pay coverage and then use the health insurance or other forms of insurance for additional insurance coverage or payment of medical bills.

If the person has health insurance and bills are submitted to the health insurance company, a questionnaire is typically sent to the injury victim from the health insurance company to determine the availability and applicability of other forms of insurance. The health insurance company will try to avoid paying for medical bills that the health insurance company determines should be paid by other forms of insurance like Med Pay coverage.

Most health insurance companies have language in the health insurance policy that requires repayment of funds to the health insurance company if the injury victim recovers compensation from the at-fault driver's insurance policy with Bodily Injury coverage or your own Uninsured Motorist coverage.

It should be noted that the responsibility for the payment of bills and insurance liens is governed by the language of the respective policies and the state and federal laws in place regarding the validity and the enforcement of collection of liens. It makes sense for a person involved in a motorcycle accident to retain the services of a Florida Motorcycle Accident Attorney for advice, consultation, and legal representation.

It should be noted that not all medical providers accept Med Pay insurance as a payment form for services provided. Because of this, it is even more important to consult with a Florida Motorcycle Accident Attorney to find out which doctors in the community accept Med Pay benefits and which doctors are experienced in treating traumatic injuries associated with a motorcycle accident.

WHAT IF THERE IS NO HEALTH INSURANCE OR MED PAY INSURANCE?

Letter of Protection. Recognizing that not all people have insurance, some medical providers in the community will accept what is called a Letter of Protection, otherwise known as an LOP. These providers are considerate enough to provide their medical services and treatment without compensation up front with the expectation of being paid at the end of your case or claim. They understand that they must wait for final settlement, yet they provide their services immediately. These physicians are truly laudable for their dedication to treating injured people above the all mighty dollar. The LOP document is usually prepared by the physician and signed by the injury victim. The LOP represents a promise to pay the medical provider upon the conclusion of the case or claim. A medical provider is not required to provide or accept a Letter of Protection. Furthermore, a medical provider can decide to at any time to cease providing medical treatment when there is an LOP in place. Upon an injury victim's execution of an LOP, the attorney for the injury victim is required to hold sufficient

funds from any recovery/settlement in the claim or case in order to satisfy the injury victim's contractual obligations under the LOP to pay the provider's bills. The LOP can help an injury victim who does not have health insurance receive necessary medical care and treatment from competent medical providers.

Private Pay/Cash/Check/Credit Card. These are typically the last options for payment for a patient. Typically, if a person does not have health insurance, the person will not have available funds to pay for medical treatment.

When a person is involved in a motorcycle accident, obtaining medical treatment and care for the reasonable and necessary medical expenses can be quite challenging. It can also put a financial strain on an injury victim and the family for not only the medical bills, but in instances where the injury victim is put out of work and unable to earn money while treating for or recovering from the accident-related injuries. When a person is injured in a motorcycle accident, it is important to retain the legal services of a Florida Motorcycle Accident Attorney so that the injury victim's rights to fair compensation are pursued, and damages are obtained that commensurate with the extent of the injuries and related medical bills.

WHAT ARE CONSIDERED REASONABLE AND NECESSARY MEDICAL EXPENSES RELATED TO A FLORIDA MOTORCYCLE ACCIDENT?

Injury victims are entitled to compensation, reimbursement, and/or payment for reasonable and necessary medical expenses. There is often a question or challenge by the insurance adjuster as to which medical bills and treatments were necessary and reasonable. The treating physician is in the best position to evaluate the injury victim's medical condition and need for current and future care. Yet, insurance companies often second-guess the opinions and findings of the treating medical providers. In any given case or claim, the insurance company can hire its own doctor to perform a paper or peer review of the injury victim's medical care and treatment and/or to conduct his or her own medical examination to determine the need for future care. This is all done in an attempt to refute the opinions of the injury victim's treating medical providers.

Because these matters can be confusing and complicated, it is helpful to consult with a Florida Motorcycle Accident Attorney on issues related to medical bills, insurance coverage, and medical treatment. The insurance companies are represented by their adjusters and attorneys — an injury victim should be represented as well. Typically, there are no set limits on the extent of care a person should receive or the length of time that treatment should be rendered for injuries sustained in a motorcycle accident.

This depends entirely on the extent of the injuries and the decisions of the individual's medical professionals. The facts and circumstances of each accident and injury should be evaluated individually when determining the reasonableness and necessity of medical expenses related to a motorcycle accident.

WHAT IS BODILY INJURY INSURANCE?

Bodily Injury insurance coverage is sometimes referred to as liability insurance or BI coverage. In other words, in order to qualify for payment or benefits under a Bodily Injury insurance policy, there must be fault or legal liability proven against the policy owner or a driver covered under the policy. Furthermore, Bodily Injury insurance typically provides coverage for medical bills, lost wages (past and future) and pain and suffering.

Bodily Injury coverage also provides compensation for future medical expenses and for future damages such as pain, suffering, mental anguish, loss of enjoyment of life, and other similar non-economic damages depending on the severity of the injuries and the applicable state laws in place regarding the entitlement to such damages.

Bodily Injury insurance policies covering vehicles typically range in policy limit value from \$10,000 to over \$1 million. It is impossible to tell how much coverage or the type of coverage there is under any particular policy without first obtaining a copy of the declaration page and the actual policy of insurance directly from the insurance company.

If there is Bodily Injury insurance coverage and there is liability on the part of the policyholder, does this mean that the insurance company will automatically pay the Bodily Injury insurance limits to the injured person? The simple answer is "No." For instance, let's say there's a \$100,000 Bodily Injury policy in place. The injured person suffered a minor neck sprain or strain and the X-rays and the MRI results did not show any injury to the disc, and as a result the individual had only minimal medical treatment resulting in minimal medical bills. In all likelihood, under such a scenario, the insurance company will offer much less than the policy limits in that case without there being more to the claim.

On the other hand, let's consider another example in which the victim sustains a serious neck injury and did not have any documented pre-existing neck injuries. The MRI results show a herniated disc. Surgery was performed, and the medical bills exceed the available policy limits of \$100,000. In this scenario, it is likely that the automobile

insurance company will pay out the \$100,000 policy limits.

The pursuit of a claim against an insurance company can be quite complicated. Because of this, it is important to seek advice, consultation, and legal representation from a Florida Motorcycle Accident Attorney as to the available insurance coverage and range of valuation of the case or claim.

HOW DOES BODILY INJURY INSURANCE PROVIDE COMPENSATION FOR MOTORCYCLE ACCIDENT INJURY VICTIMS?

Bodily Injury insurance coverage, if available, will pay for pain and suffering, mental anguish, loss of enjoyment of life, lost wages, medical bills, and other related damages related to personal injuries if another person was at-fault for the accident that caused injuries to the victim. The amount of Bodily Injury insurance coverage varies by company and vehicle. Typically, the higher the premium, the more coverage that will be in place for a particular vehicle or accident. Bodily Injury insurance coverage can be in the amount of \$10,000, \$15,000, \$20,000, \$25,000, \$50,000, \$100,000, and all the way up to \$1,000,000 or more.

The right to compensation is dependent upon the facts and circumstances of each case, including but not limited to fault, the amount of medical bills and lost wages, the diagnostic testing results, pre-existing injuries or conditions, the records of the treating physicians, and the need for future medical care such as surgery and/or pain management. Even when a person has extensive medical treatment, including pain management therapy and/or surgery, the insurance companies will still question the causal relationship between the injuries and the motorcycle accident.

Insurance companies have doctors that they hire to review medical records of the injury victim and/or examine the injury victim, and they use those methods as basis to deny claims or limit the payments or offers on injury claims. Because of the adversarial nature of insurance claims and the occasional unwillingness of insurance companies to pay fair value in the case of well documented fault with resulting injuries and damages, injury victims should retain the services of a Florida Motorcycle Accident Attorney.

WHAT IS UNINSURED OR UNDERINSURED MOTORIST INSURANCE COVERAGE?

These are common questions many injury victims have. Uninsured or Underinsured Motorist (UM/UIM) insurance coverage is an optional type of insurance coverage in the State of Florida. There are additional premiums associated with such coverage. Because of the additional expense of most UM/UIM coverage, many automobile and motorcycle owners choose to decline such coverage. However, given the number of uninsured and underinsured drivers in Florida, it is wise to carry UM/UIM coverage.

Here are some examples that will help explain the nature and coverage Uninsured and Underinsured Motorist coverage.

Uninsured Motorist Coverage. Let's say that a person is rear-ended by the driver of another vehicle and the at-fault driver and owner did not carry Bodily Injury "(BI)" insurance coverage. Assuming that the injury victim carried his/her own UM coverage, or the owner of the vehicle occupied by the injured victim carried UM coverage, there could be a claim brought for UM benefits under this fact pattern. In order to qualify for UM coverage, the injury victim would need to prove that there was no BI coverage provided for the driver and owner of the at-fault motor vehicle. The lack of BI coverage for the at-fault vehicle driver/owner can be established by a letter from the at-fault driver's insurance company or other supporting documentation. Uninsured Motorist insurance, if available, can provide compensation for an injury victim for medical bills and wage loss (not otherwise covered or paid for by health insurance or Med Pay), future medical bills, past and future pain, suffering, loss of enjoyment of life, mental anguish, and other damages.

Underinsured Motorist Coverage - UIM Coverage. While Underinsured Motorist (UIM) coverage and Uninsured Motorist (UM) coverage are similar in nature, there is a slight difference between these coverages. Let's assume that the at-fault driver carried a \$10,000 Bodily Injury insurance policy. Let's further assume that the injury victim suffered a fractured leg that required surgery which resulted in hospital bills exceeding \$25,000. Under this fact scenario, the injuries or damages clearly exceed the Bodily Injury coverage of \$10,000. There would likely be a viable claim for Underinsured Motorist (UIM) benefits because the available Bodily Injury coverage limits are not sufficient to compensate the injury victim fully for his or her injuries. This would be a good example of a situation in which the injury victim could claim and probably recover benefits under the Underinsured Motorist insurance coverage of their own policy.

The aforementioned fact scenarios are just two of a myriad of fact scenarios that can occur regarding Uninsured or Underinsured Motorist insurance coverage. Because of the complexity of UM/UIM coverage and the application of the coverage, it is often helpful to retain the services of a Florida Motorcycle Accident Attorney for advice, consultation, and legal representation.

WHAT LOST WAGES CAN BE RECOVERED FOR THE VICTIM FOLLOWING A MOTORCYCLE ACCIDENT?

When a motorcyclist suffers personal injuries as a result of a motorcycle accident, there often is a loss of income, wages, and work resulting from their injuries. This can and does put additional stress on the motorcyclist and the family of the motorcyclist. Depending on the available insurance coverage, there may be a way to recover lost wages as they incur. It is important for the injured biker and the family to understand the available insurance coverage, legal rights, and the manner in which these claims are handled and processed.

One way to collect lost wages would be through a short-term disability insurance policy. This type of coverage is, at times, obtained through an employer as a benefit. However, most injury victims do not have such insurance coverage.

Many injured motorcyclists mistakenly believe that the automobile insurance policy for the at-fault driver will begin paying wage loss as soon as the claim is submitted. While wage loss and loss of earning capacity are elements of damages, the Bodily Injury portion of an automobile insurance policy typically does not provide compensation on an ongoing or frequent basis. If there is a settlement, it is typically a lump settlement - single payment settlement. As such, while wage loss can be collected from the at-fault driver's insurance company, it is typically done so after medical treatment is completed and a final settlement is reached.

Because of the complexities of motorcycle insurance, automobile insurance, claims, and cases in the aftermath of a motorcycle accident, the motorcyclist should reach out to a Florida Motorcycle Accident Attorney for a free consultation, advice, and legal representation.

SHOULD DOCUMENTS BE SIGNED FOR AN INSURANCE COMPANY FOLLOWING A FLORIDA MOTORCYCLE ACCIDENT?

Generally, there are four types of releases/authorizations that automobile and motorcycle insurance companies send out to injury victims following an accident. Since the signing of a release for an insurance company may result in the waiver of important legal rights, it is important to get advice, consultation, and/or legal representation before signing these documents for the insurance company. In pursuing benefits under or through an automobile insurance policy, there may be certain time limitations that apply. Here are the four basic releases or authorizations that are typically sent to an injury victim following an accident:

1. Medical Authorization. This document will give the insurance company the authority to retrieve medical records of the injured person. Depending on the language of the authorization, it may provide authorization for records related to treatment for the motorcycle accidents AND prior medical records as well.
2. Wage Loss and Salary Verification/Authorization. This document will give the insurance company the authority to obtain wage and salary documentation for the injured person. These documents are obtained in order to process or document past earnings for purposes of wage loss claims.
3. Property Damage Release. This document is typically signed for the cost of repairs for the vehicle once there is a settlement with respect to the value of the vehicle.
4. General Release. This document, in most instances, effectively results in the waiver of all claims against the at-fault driver, at-fault owner, and the automobile/motorcycle insurance company. An injury victim should not sign this document without legal representation or at least a consultation with a Florida Motorcycle Accident Attorney.

The language of a release or authorization is important, since there is no uniform or universal release/authorization that is used in every case or by every insurance company. Following a motorcycle accident, an injury victim is often sent forms and documents from his or her insurance company as well as from the automobile/motorcycle insurance company for the at-fault owner/driver. It is not always clear to the injured person what is being signed or what should be signed. Because of this, the injury victim should seek legal advice to make sure that important rights are not being waived or compromised.

SHOULD AN INJURY VICTIM SIGN A RELEASE SENT FROM THE VICTIM'S INSURANCE COMPANY OR THE OTHER DRIVER'S INSURANCE COMPANY?

Following a Florida Motorcycle Accident, should an injury victim sign documents including a Release for an automobile/motorcycle insurance company or another insurance company? The simple answer to this question is, "No." However, further explanation is needed so that the injury victim has a better understanding of the legal and insurance process. The documents should not be signed or completed without first contacting an attorney for legal advice, consultation, and representation so that the injury victim has full knowledge of his or her rights following an accident.

Soon after a typical Florida Motorcycle Accident, insurance adjusters are working on the file and the claim. Some companies and their insurers tend to act very quickly to resolve claims and cases by seeking to have the injury victim sign a general release for a nominal (small) settlement. Before documents are signed, it is important for the injury victim to understand the meaning and impact of signing any settlement documents presented to them by an insurance company. For instance, if an injury victim accepts \$500 as a settlement even though the claim may be worth more, AND the injury victim signs a release in favor of the at-fault driver/owner and his or her insurers, the injury victim may have then waived his or her rights to additional compensation. The release may be upheld even though the settlement was patently unfair and even though the injury victim did not have the benefit of legal counsel or advice.

In the first few days following an accident, there is often confusion, pain, discomfort, and disorganization. Because of this, many insurance companies soon after the accident will attempt to enter into quick settlements in exchange for releases of all liability. Many unsuspecting injury victims accept the small settlement sums being offered in order to receive money quickly in order to get them through short-term hardships. Unfortunately, when these situations occur, it can be presumed that the injury victim read and understood the documents they may have signed releasing the at-fault parties. While there may be arguments of fraud or undue influence, it is typically an uphill battle to get a release nullified by the courts or to prevail in a claim to enforce the settlement. Because of this, it is important for injury victims to consult with a Florida Motorcycle Accident Attorney before any documents, including release documents, are signed by an injury victim.



FLORIDA MOTORCYCLE ACCIDENTS - TYPES OF INJURIES

MOTORCYCLE ACCIDENT PERSONAL INJURIES

Motorcycle accident injuries run the spectrum from minor scrapes and bruises to the death of the motorcyclist or rider. The National Highway Transportation Safety Administration reports that in more than 80% of motorcycle accidents - there is an injury or death to a motorcyclist or rider. This is quite a high and troubling statistic, but understandable. Unlike other motor vehicles, a motorcycle lacks crashworthiness and occupant safety features that protect occupants of passenger and commercial motor vehicles. Furthermore, riders are most often ejected from motorcycles during a crash which tend to lead to greater injury.

Another feature of motorcycle accidents is the prevalence of head injuries. Typically, occupants of a motor vehicle are not ejected from the vehicle. They are protected to a great extent by air bags and other safety features that can prevent or lessen the effects of a head injury. While a properly fitting and approved motorcycle helmet can help prevent and lessen some injuries, a motorcyclist and rider are put at a greater risk for head injury than an occupant of a motor vehicle.

An injured motorcyclist may also struggle with the payment of medical bills. As such, even when a motorcyclist is properly insured and otherwise operating the motorcycle with due care, the motorcyclist may be put in a bind when the motorcyclist is injured. There may be no immediate source of payment of medical bills associated with the motorcycle accident. While one would think that the at-fault driver's insurance company would step right up and cover the medical bills, the process does not work so smoothly. Without health insurance, there will be challenges to obtaining medical care and getting the medical bills paid. However, with the right medical provider in

place, arrangements can be made to get treatment for motorcycle related injuries and have the provider paid through the proceeds of the settlement. This is generally referred to as a Letter of Protection (LOP) which is covered in other parts of the book.

Following a motorcycle accident, it is important for the motorcyclist to get timely treatment and evaluation from qualified doctors. At times, a motorcyclist, who by his or her lifestyle and demeanor, will try to tough out the personal injuries by declining or delaying medical care. This can be a big mistake when it comes to the pursuit of a claim or case against an insurance company. If there is a delay and/or lack of treatment, insurance companies will assume that the personal injuries were not significant OR that the personal injuries were not even the result of the motorcycle accident. As such, timely treatment and follow-up are recommended from both a medical and a claims standpoint.

Even when the personal injuries are significant and apparently clear to any person with some common sense, insurance companies will still challenge the severity of the personal injuries and the value of the case. Insurance companies are notorious for casting blame everywhere but on themselves.

Motorcycle accidents can be quite complex both by the mechanism of the accident, the injuries sustained, and the treatment needed. Because of the complexities of motorcycle accidents and associated injuries, it is best to contact a Florida Motorcycle Accident Attorney for advice, guidance, and legal representation.

SERIOUS PERSONAL INJURIES CAUSED BY MOTORCYCLE ACCIDENTS

Most motorcyclists, prior to a motorcycle accident, live a very active and productive life both on and off the motorcycle. Bikers tend to have certain gusto for life. Combined with a strong work ethic and love of country, motorcyclists take advantage of the freedom and liberties we have in the United States. Unfortunately, in just a matter of seconds, a motorcyclist's life as he or she knows it can change quite quickly as a result of a motorcycle accident and the ensuing personal injuries. For many motorcycle accidents, the personal injuries are quite serious and have a lifetime impact on the motorcyclist and their family.

Serious personal injuries can include any one or more of the following: paralysis, brain damage, immobility, chronic pain, fractures, surgeries, loss of wages, loss of ability to work, neurological issues, and others. When a motorcyclist suffers a permanent injury through no fault of his or her own, there absolutely should be a claim or case pursued on behalf of the injured biker.

Watching Out for Motorcyclists



The availability and amount of insurance for the at-fault driver as well as the motorcyclist can have a big impact on the way and manner in which the claim or case is pursued. If insurance coverage is limited, that will raise a series of questions and issues as to how to best handle the claim and the high medical bills. Before statements are given or releases are signed, the injury victim and family should consult with an experienced Florida Motorcycle Accident for advice, guidance, and legal representation. There are far too many twists and turns for an injury victim to attempt to stand toe to toe with an experienced insurance claims adjuster who has a certain loyalty to the insurance carrier/company rather than to the victim. Furthermore, when there are high medical bills, these can often be negotiated down depending on the amount of the settlement. If the injured motorcyclist had health insurance that paid for medical bills, then there most likely will be a lien or request for repayment by the health insurance company if there is a settlement. These are only a few pieces of the puzzle that constitutes a personal injury case or claim on behalf of a motorcyclist who suffered serious personal injuries as a result of a motorcycle accident.

In addition to the economic damages associated with a motorcycle accident in the form of medical bills and wage loss, there are also non-economic damages in the form of pain, suffering, mental anguish, and, yes, the loss of enjoyment of life. Remember, a member of the motorcycle community typically has a zest for life that is negatively and permanently impacted by serious personal injuries. It should be noted that there is no formula per se or statute that designates what is fair or reasonable compensation as to non-economic damages. It all depends on the case, facts, and, to a certain extent, the presentation of the case by an experienced Florida Motorcycle Accident Attorney.



TYPES OF PERSONAL INJURIES

When a person is injured as a result of a Florida Motorcycle Accident, the injuries may be localized to one part of the body OR they may involve multiple parts of the body. For some people, the injuries only require a doctor's visit or two and that is it. For others, the injuries are serious and permanent. The lifetime effects of personal injuries can be quite devastating and can significantly impact a person's activities of daily living. While there are common injuries that result from motorcycle accidents, it should be noted that each injury victim is unique. Each deserves individual attention from his or her medical providers for the recommended and necessary treatment, and from his or her attorney for legal representation to deal with their legal needs.

NECK AND BACK PERSONAL INJURIES

As a result of a traumatic event like a motorcycle accident, a victim may suffer personal injuries to the neck, middle back, and or low back. For some victims, the injuries are short-term in duration and they may heal with little to no medical treatment. However, for many other victims, neck and back injuries are permanent in nature and they may require extensive medical care. When there are neck and back injuries following a traumatic event, it is important for the victim to seek out medical care and evaluations from medical providers with experience and knowledge treating traumatic neck and back injuries. It is also important to treat with medical providers who have a good understanding of the automobile insurance payment and compensation system.

Let's discuss some basic terms so that you have a better understanding of the neck and back and how injuries may affect you from a medical standpoint.

Neck - Cervical Spine. The neck, also referred to as the cervical spine, consists of 7 bony structures called vertebrae designated as C1 through C7. C1 is the top of the neck while C7 is the bottom of the neck. Compared to the mid back and the low back, the cervical vertebrae are the smallest vertebrae in the spine. Cervical discs sit between

the vertebrae and act like shock absorbing cushions as the vertebrae move. Discs are composed of a tough exterior (called the annulus fibrosis) and a soft, jelly interior (called the nucleus pulposus).

Middle Back - Thoracic Spine. The upper and middle back, also referred to as the thoracic spine, consists of twelve vertebrae. The thoracic spine extends down to connect to the lower back or the lumbar spine. The twelve vertebrae are designated at T1 through T12. The thoracic spine also has discs in between the vertebrae.

Low Back - Lumbar Spine. The low back, also referred to as the lumbar spine, consists of five vertebrae which are designated as L1 through L5. There are discs between these vertebrae as well.

Sacral Region (Bottom of the Spine). The sacral region is located below the lumbar spine. The sacral region is composed of five bony segments that are fused together and designated as S1 through S5. The part of the spine where the lumbar spine meets the sacral region is designated as L5-S1.

There are a number of other structures and components that form the cervical-thoracic-lumbar spine and connect to the spine. If any one component is damaged or compromised due to trauma, the functioning of the cervical, thoracic, and/or lumbar spine can be significantly affected. For many personal injury cases, it takes a team of doctors to properly diagnose and treat the trauma related personal injuries. Insurance companies will evaluate all claims and will carefully scrutinize most claims in an attempt to save money off of their insurance policy limits. Insurance companies evaluate each case from a business perspective rather than from a personal one. Some claims are fairly evaluated and quickly settled. Many others require the push, advocacy, and, yes, the fight and support of a Florida Motorcycle Accident Attorney in order to pursue and obtain the proper compensation for the injury victim. Contrary to popular belief, and contrary to the images portrayed by insurance company commercials on television and radio that blanket our airwaves, most insurance companies adopt claims-handling practices that are designed to refute claims or to minimize the amounts they have to pay to resolve claims.

SHOULDER PERSONAL INJURIES

Trauma or injury to the shoulder can be caused by a Florida Motorcycle Accident. The severity and type of injuries can range from a minor sprain to a more significant injury that requires surgery due to a fracture or tear of one or more internal mechanisms

of the shoulder. Some fractures cannot be readily repaired so the arm/shoulder is immobilized and the patient undergoes a term of physical therapy to help with pain, function, and range of motion. Pain management is also an option for shoulder injuries that do not respond to conservative treatment and therapy.

The shoulder is comprised of three bones including:

the clavicle - commonly referred to as the collar bone;

the humerus - commonly referred to as the arm bone; and

the scapula - commonly referred to as the “wing” or shoulder blade.

A shoulder can be fractured as a result of a motorcycle accident or other trauma. The most common fracture of the shoulder involves the clavicle. Scapula fractures and proximal humerus fractures are not as common but can result from trauma resulting from a motorcycle accident. The shoulder bones are joined together by the soft tissues or connective tissues which consist of the joint capsule, muscles, tendons and ligaments. There are three joints that make up the shoulder, which include the following:

The sternoclavicular joint;

The acromioclavicular joint; and

The glenohumeral joint.

These bones are joined together by soft tissues (ligaments, tendons, muscles, and joint capsule) to form a platform for the arm to work.

A commonly reported injury from a Florida Motorcycle Accident involves the rotator cuff, which is a joint capsule that supports the arm at the shoulder joint. It consists of four tendons that stabilize the shoulder and attach to muscles. When the rotator cuff is injured as a result of trauma from a motorcycle accident, the injury victim can experience pain, weakness, and decreased range of motion in the shoulder. Many rotator cuff injuries involve tears that require surgical intervention from an orthopedic surgeon. During the course of treatment and diagnosis, it is common to have an X-Ray of the shoulder, MRI of the shoulder, and clinical examinations and assessments to pinpoint the injury and to formulate a treatment plan for this particular type of shoulder injury.

A dislocated shoulder occurs when the upper arm bone pops out of the shoulder socket, which is part of the shoulder blade. In particular, the humerus (arm bone) separates from the scapula (shoulder blade) at the glenohumeral joint.

Another commonly reported shoulder injury from a motorcycle accident is called a SLAP tear injury, which is a personal injury to the labrum of the shoulder. The labrum is a ring of cartilage that surrounds the joint of the shoulder. A SLAP tear Injury can cause significant pain and a catching type of sensation in the shoulder or arm with movement. With a SLAP tear injury; there often is pain, difficulty with activities of daily living, and instability. Some SLAP tear injuries require surgery and some do not.

ARM AND WRIST PERSONAL INJURIES

Trauma or personal injury to the arm or upper extremity often results from a Florida Motorcycle Accident. A person can suffer serious injuries to the arm especially when there is a side impact or a direct head-on crash. When a person is injured due to the negligence or fault of another driver, a case or claim for personal injuries can be pursued on behalf of the injury victim.

While arm or upper extremity personal injuries are not as common as neck and back injuries resulting from most motorcycle accidents, they nevertheless do occur. The arm is comprised of three large bones as follows:

The humerus bone - commonly referred to as the upper arm. The humerus bone is located between the shoulder and the elbow.

The radius bone - commonly referred to as the forearm. The radius bone is located between the elbow and the thumb side of the wrist.

The ulna bone - commonly referred to as the forearm. The ulna bone is located between the elbow and the small finger (pinkie) side of the wrist.

The humerus bone, radius bone, and the ulna bone join together at the elbow. Like the knee and ankle, the elbow is a joint which serves as a hinge of sort and allows for the flexion and extension of the arm or upper extremity.

When there is a fracture of the radius bone or the ulna bone, a common form of treatment is to cast and immobilize the arm which, over time, will allow for the healing

of the bone. When there are compound fractures of the radius bone or the ulna bone, surgical intervention may be required to place pins, plates, screws, or other hardware to stabilize the bone.

The radius bone and ulna bone are joined with the bones of the hand which form the wrist. The carpal bones (as part of the carpus) consist of eight bones which form the wrist and the hand.

The arm and wrist are also composed of ligaments, tendons, and muscles that can be damaged or injured due to trauma from a Florida Motorcycle Accident. The biceps muscle is the muscle that is located on the front of the humerus (upper arm), and the biceps muscle is connected to bones through three tendons. Two tendons (the long head tendon and the short head tendon) attach the biceps muscle to the shoulder, and the other tendon attaches the biceps muscle to the radius bone (lower arm). The tendon attaches the biceps muscle to the radius bone at the elbow joint. The triceps muscle is the muscle located on the back of the humerus (upper arm). The triceps muscle allows for the straightening of the arm or the extension of the elbow joint. Tendons are strong bands of tissue that connect muscles to bone.

When there is trauma to the arm from an accident, the arm may be fractured or suffer tears to a muscle, tendon, or ligament. A direct impact or trauma to the arm can result in serious personal injuries. In addition, a sudden forceful twisting or turning of the arm can also result in serious personal injuries that require medical treatment including therapy, pain management, and surgical intervention.

Like other injuries that get diagnosed following a Florida Motorcycle Accident, it is important for an injury victim to get timely treatment. Furthermore, it is helpful to have a specialist like an orthopedic surgeon to supervise the care and to diagnose the personal injuries. It should be noted that in this age of specialists, only certain orthopedic surgeons treat upper extremity and shoulder personal injuries. Many insurance companies will question the cause of any injury stemming from the motorcycle accident. Because of this, it is important that the treating physicians carefully document the injuries and make it clear in the medical records, reports, and testimony whether or not the personal injuries bear a causal relationship to the motor vehicle accident. Because of the complexities of medical care, aggravation of pre-existing injuries, proof required in our legal system, and many other factors, it is important for an injury victim to consider obtaining advice, guidance, and legal representation from a Florida Motorcycle Accident Attorney, preferably from the beginning of the case through its conclusion.

LEG AND ANKLE PERSONAL INJURIES

Trauma or personal injury to the leg or lower extremity often results from a Florida Motorcycle Accident. While leg or lower extremity injuries are not as common as injuries to the neck, mid back, or low back, there are a great number of injury victims who suffer traumatic leg injuries as a result of a crash. There are essentially three bones that form the length of the leg above and below the knee as follows:

The femur - commonly referred to as the thigh bone;

The tibia - commonly referred to as the shin bone; and

The fibula - the thinner bone that runs parallel to the shin bone.

It should be noted that the tibia and the fibula run parallel to each other. Where there is a significant trauma or crash, there can be fracture to one or more of the bones in the leg. Fractures can be diagnosed as a simple fracture or a compound fracture. A simple fracture of the leg is a closed fracture that does not penetrate through the skin and involves little to no damage or injury to the surrounding soft tissues of the leg. A compound fracture is also referred to as an open fracture. A compound fracture is more serious than a simple fracture. An injury victim who suffers a compound fracture is at high risk for infection due to the nature and seriousness of this personal injury. A comminuted fracture can be designated as a simple fracture or compound fracture. A comminuted fracture refers to fractures in which the bone breaks into several small pieces of bone that no longer fit together. Conversely, a non-comminuted fracture occurs when the bone breaks, but keeps its form and symmetry.

A significant and traumatic fracture of one or more of the leg bones can require surgical intervention and the placement of hardware in the injury victim. For instance, for some femur bone fractures, a hole is drilled into the femur for placement and positioning of a metal rod for stability of the leg due to the trauma and the fracture(s). There may also be the placement of screws and plating for some fractures of the lower extremity.

The tibia and fibula bone form the lower leg and form part of the joint commonly referred to as the ankle. A third bone, the talus bone, fits between the tibia bone and fibula bone. The three bones are held together by strong strands or fibers of collagen which are commonly referred to as ligaments. Similar to the knee, the ankle is a large joint. An ankle can be injured by force, trauma, or twisting from a motorcycle accident.

It is important for a personal injury victim to be treated and evaluated by a specialist who regularly treats leg injuries or lower extremity injuries. If there is fracture of the leg or a compromise or tear of the ligaments, the injury victim should be evaluated and treated as needed by an experienced and qualified orthopedic surgeon or podiatrist (foot and ankle surgeon).

KNEE PERSONAL INJURIES

Trauma or personal injury to the knee often results from a Florida Motorcycle Accident. The knee is noted to be the largest joint in the human body. Studies and reports document that the knee is one of the more easily injured joints. In other words, by its composition and structure, the knee tends to be susceptible to injury from motorcycle accidents and other forms of trauma. The knee is comprised of tendons, ligaments, cartilage, and bones. The knee is a meeting place of sorts for the following three bones:

The patella - commonly referred to as the knee cap;

The tibia - commonly referred to as the shin bone; and

The femur - commonly referred to as the thigh bone.

The knee is comprised of not only the meeting place of the bones, but is also comprised of and held together by cartilage in the following forms:

The articular cartilage covers the end of the femur and tibia and the back of the patella. The articular cartilage provides a slippery type of component that helps with the bending and straightening of the leg. The meniscus is commonly referred to as the shock absorber of the knee. The meniscus helps cushion and stabilize the movement of the knee. Unlike the articular cartilage which is slippery - the meniscus is noted to be tough and rubber like in its form and function.

As noted above, the knee is a meeting place of sorts for bones and other components. The bones are connected by ligaments which essentially hold them together and provide knee stability. There are four ligaments which are designated as follows:

The collateral ligament, located on each side - left and right (inside or medial (MCL), and outside or lateral (LCL));

The cruciate ligament, located on the front/center and back/center of the knee - respectively the anterior cruciate ligament (ACL) and the posterior cruciate ligament (PCL).

There are also tendons as connective tissue for the knee in the form of the quadriceps tendon and the patella tendon.

With respect to fractures, a common fracture of the knee involves the patella bone. It is well known that a knee fracture can result from trauma, including the kind of trauma experienced in a motorcycle accident. A fracture can result from impact with the ground, the bike or a motor vehicle.

Trauma from an impact or sudden movement or force can cause personal injuries to the one or more of the various components of the knee resulting from a Florida Motorcycle Accident. Treatment for the knee may involve therapy, pain management, and when necessary, surgical intervention. X-Rays and MRI studies are often utilized to help diagnose the knee injury and any recommended course of treatment. A tear to a ligament or meniscus can be extremely painful and interfere with work responsibilities and activities of daily living. A knee injury can significantly affect a person's gait or ability to walk. Over time, it is common to see the earlier onset of arthritis and the requirement of a knee replacement in the years following a serious knee injury resulting from a Florida Motorcycle Accident.

LACERATION AND SCAR PERSONAL INJURIES

Many motorcycle accidents result in lacerations and injuries that require stitches/staples at an emergency room, urgent care center, or other location. Even more serious situations may require surgery in a hospital. When an injury victim suffers lacerations or scarring types of injuries (road rash), certain steps should be taken to make sure that they receive appropriate medical care and follow-up. Furthermore, documentation of the injuries is important if an insurance claim is pursued. Here are some points to keep in mind:

Fire Rescue and Emergency Responders. Emergency responders are often called to an accident scene to render medical care and evaluation. If there is a laceration or other open wound, it is important to have the laceration or wound cleaned and prepped for further care and follow-up at the emergency room. Many lacerations and wounds are treated at a local emergency room. The care provided will depend on the depth, size, and severity of the injuries sustained by the injury victim.

Photographs and Video of the Injuries. Photographs and/or videos of the injuries can help document the injuries for both the purpose of monitoring the progress of the injuries and for the purpose of documentation for the legal/insurance claim or case.

Follow-up Care - Family Doctor. If the injuries are minor, follow-up can be managed by a Primary Care Physician (PCP). It is important to follow the instructions of the PCP.

Follow-up Care - Plastic and Reconstructive Surgeon. Many lacerations and scarring type of injuries require the follow-up care by a plastic and reconstructive surgeon. The care and treatment will depend on the severity of the injury, the natural healing process, and the age of the injury victim.

Additional Photographs and Video of the Injuries. It is often helpful to have photographs and videos of the injuries as time progresses in order to properly and accurately document the nature and extent of the injuries over time.

Compensation for Lacerations and Scars. The amount of compensation that will be paid or awarded to an injury victim with these injuries will depend on a number of factors including the following:

- Location of Scar;
- Age of the injury victim;
- Permanency of the Injury;
- Size of the Injury;
- Reversibility of the Injury;
- Amount of Insurance Coverage;
- Amount of Medical Bills;
- Extent of Medical Treatment, and
- Other Factors

It can be devastating when a person suffers a permanent injury or scarring as a result of the negligence of another person or business entity. Even injuries that resolve over time can be traumatic as well. When a person is injured as a result of the fault of another person, business, or government entity, it is often helpful to seek out legal representation for those issues that may arise, including medical bills, insurance, compensation, and other concerns.

TRAUMATIC BRAIN INJURIES - BRAIN DAMAGE

Traumatic Brain Injury (TBI) is a complex personal injury that is associated with a wide range of symptoms, impairments, and disabilities. A Traumatic Brain Injury (often referred to as a TBI) can be caused any time there is direct trauma to the head OR any time that there is a forceful back and forth motion (whiplash) of the head with the brain being impacted within the head and against the skull. It should be noted that our understanding of TBI's is still emerging. While all fields and studies of medicine emerge over time, it seems that the study of Traumatic Brain Injury is essentially in its infancy, although there does seem to be much more awareness of TBI these days. Certainly, the general public needs to be aware of the signs, symptoms, and issues associated with Traumatic Brain Injury. This is especially true for the personal injury victim and his or her family.

It should be further noted that a Traumatic Brain Injury is different than a musculoskeletal injury. The brain is much more complex than let's say the femur - the leg bone. The brain controls and affects cognitive functions and personality. The leg is primarily a mechanical functioning body part. It is much more difficult to diagnose, assess, and treat a Traumatic Brain Injury as compared with a leg or other type of musculoskeletal injury.

A Traumatic Brain Injury (TBI) can be generally classified into two categories: Mild Traumatic Brain Injury and Severe Traumatic Brain Injury. With a Mild Traumatic Brain Injury, initially there may be a brief period of loss of consciousness and/or confusion. There may also be a period of disorientation. Some experts opine that less than 30 minutes of loss of consciousness, confusion, and/or disorientation may place a TBI in the category of Mild Traumatic Brain Injury. There is no real consensus on this characteristic since TBI's can present itself in many different ways in different people. A person may sustain and be diagnosed with a Traumatic Brain Injury even if the diagnostic studies such as a brain MRI and/or a brain CAT scan are negative. Symptoms associated with a Mild Traumatic Brain Injury may include cognitive issues, headaches, mood swings, frustration, and difficulty thinking or processing information.

Severe Traumatic Brain Injury may be associated with loss of consciousness, confusion, and/or disorientation for more than 30 minutes following the impact from the crash or traumatic incident. Each patient must be evaluated on his or her own individual symptoms so that a baseline can hopefully be established based on the individual's conditions prior to the crash or the traumatic incident. With severe Traumatic Brain Injury, there may be more severe cognitive issues, speech deficits, short-term and long term memory deficits, emotional issues, and a host of other problems that can and do affect the life, lifestyle, and activities of daily living of the personal injury victim.



Pursuing a case or claim for personal injuries is not an easy task. Traumatic Brain Injury victims usually require evaluation and care from specialists uniquely qualified to diagnose, assess, and treat these serious personal injuries. Certainly, a Board Certified Neurologist should be involved in the care and follow-up of the injury victim as soon as practical. Thereafter, more testing can be completed as recommended to be necessary, reasonable, and appropriate by the treating neurologist and the other medical providers treating the TBI. In all injury cases, it is important to distinguish the victim's condition and functional abilities on a pre-injury basis and on a post-injury basis. For example, if an injury victim was a straight A student before the crash and went from this to failing his or her classes - this can be a significant documented change of the cognitive and functional levels of the injury victim. Again, each injury victim should be evaluated on the relevant facts, circumstances, medical records, testing, and assessments of the medical providers, including but not limited to the treating neurologist.

When a person suffers serious personal injuries like a head injury, brain injury, or a concussion, a legal claim or case can be pursued on behalf of the injury victim. The case or claim must be evaluated on its own facts and merits. A person who proves fault, injury causation, and damages is entitled to compensation for those injuries and damages that are caused by the negligent person, business, government, and/or other legal entity. The amount of compensation will depend on a number of factors which may include the following:

- Severity of the head injury;
- Medical treatment provided for the injury victim;
- Medical treatment expected or needed for the future;
- The effect of the head injury on employment;
- The effect of the head injury on activities of daily living;
- The amount of the medical bills;
- The amount of future medical bills;
- Whether the injuries will affect employability in the future;
- The need and expense associated with short or long term care; and
- Other factors.

Because brain and head injury cases can be quite complex, it is often helpful to have legal representation from a Florida Motorcycle Accident Attorney with experience in handling head injuries.

CATASTROPHIC INJURIES

Much like Traumatic Brain Injuries, many motorcycle accidents in Florida result in catastrophic injuries or death. Given the forces involved in most crashes involving a motorcycle, the injuries suffered by motorists are often less significant than those of a motorcyclist. In car crashes, musculoskeletal injuries (neck and back) are typically less severe in lower velocity crashes than in crashes with more severe forces and crash dynamics.

All too often, crashes involving motorcycles result in the loss of life, the loss of limbs, the loss of motor function, and the loss of capacity to care for oneself. While the medical treatment modalities for such injuries are similar to those outlined in this book, catastrophic injuries are life-altering injuries, and they are treated under the law differently because of the enormous implications they have on one's future.

Catastrophic injuries may require the placement of prosthetic limbs, around-the-clock medical care, and daily assistance with normal and routine activities of daily living such as grooming, bathing, toileting, and feeding. Catastrophic injuries often require modification of the individual's residence in order to accommodate ramps, wheelchairs, and other assistive devices and equipment. The law allows individuals who have suffered such permanent injuries to seek the recovery of reasonable and necessary medical expenses through the remainder of their life. These are commonly referred to as "future economic damages for medical expenses."

Cases and claims cannot go on beyond legal limitation periods. Often times claims end at settlement or trial. The law only affords an injured person 1 chance to be compensated for their injuries. Therefore, the nature, extent, and impact that a catastrophic injury may have on a person into the future must be explained to the jury or claims adjuster. Attorneys use experts such as vocational rehabilitation experts, burn-injury experts, life-care planners, and other medical specialists to assist courts, jurors, and the parties to project as best as possible the medical and health needs of the catastrophically-injured person for the remainder of his or her statistical life expectancy. These experts make their projections to a reasonable degree of medical certainty or probability based on their experience and expertise. Those future needs are usually laid out in a detailed report or plan called a "life-care plan." Another expert (typically an economist) will then take the life-care plan and provide an opinion as to the costs that will be necessary to implement the plan throughout the remainder of the individual's statistical life expectancy.

Watching Out for Motorcyclists

Attorneys with experience in handling Florida Motorcycle Accidents and other cases involving catastrophic injuries can assist the injured victim's medical providers and experts by ensuring that the reasonable and necessary expenses for future medical care and treatment are documented and presented effectively to jurors. For these are the people that may be asked to determine the amount of such damages after hearing the evidence.



FLORIDA MOTORCYCLE ACCIDENTS: WRONGFUL DEATH

MOTORCYCLE ACCIDENT FATALITIES

Approximately 5,000 people die each year due to motorcycle accidents. The National Highway Traffic Safety Administration (NHTSA) monitors and reports the trends and statistics regarding motorcycle accidents across the United States. Deaths are not concentrated in any one age group. Approximately half of the deaths involve a person under 40 years old with the other half, of course, being a population over the age of 40 years old. It is estimated that approximately 40% of the deaths involved a motorcyclist or rider who was not wearing a helmet. While this is a troubling statistic, it does not mean that the wearing of a helmet would have always prevented the death of the motorcyclist or rider. Getting that particular statistic would require additional research and a more detailed review of information and data that may not be otherwise readily available to NHTSA and other reporting agencies.

According to NHTSA, there are over 8 million motorcycles on the road every given year. Along with the approximate 5,000 deaths, NHTSA reports that approximately 90,000 more motorcyclists are injured every year as a result of motorcycle accidents. Of the deaths reported, over 25% involved a motorcyclist who was not properly licensed.

These statistics show, in part, the breadth and depth of the tragedies of motorcycle accident injuries and deaths. However, the rise, fall, or status quo of statistics really do not mean much to the family of the motorcyclist who lost his or her life as a result of the negligence of another driver.

In the State of Florida, the pursuit of a wrongful death case for a motorcyclist is governed by Chapter 768, Florida Statutes. The purpose of the Florida Wrongful Death Act is covered by Section 768.17, Florida Statutes:

It is the public policy of the state to shift the losses resulting when a wrongful death occurs from the survivors of the decedent to the wrongdoer.

As noted above, the wrongful death act puts the responsibility for the loss on the negligent party and was drafted to benefit the survivors of the motorcyclist who died as a result of a motorcycle accident. In most cases that are pursued through a claim or case, insurance companies act on behalf of the negligent driver or on the behalf of the Uninsured Motorist carrier will be involved as part of the process.

Certainly, no amount of money or insurance can ever satisfactorily compensate a grieving family when there is a loss of life resulting from a motorcycle accident. However, our civil justice system does provide a method and mechanism to pursue such claims. It should be noted that even though there are laws in place in the form of the Florida Wrongful Death Act - there is no exact formula or numerical calculation mandated in order to set the compensation or value of a wrongful death case on behalf of the statutory survivors. Each case or claim should be evaluated on its own facts and merits and then presented accordingly. Even when a death occurs from a motorcycle accident, insurance companies still step in and defend the case and take steps and actions to attempt to limit the recovery of the surviving family members.

Wrongful death cases are complicated, even when the liability or fault of the negligent driver is clear. As such, the family of the deceased motorcyclist should seek out advice, guidance, and legal representation to make sure that the respective rights of each surviving family member per Florida Statutes and the Estate Laws are properly protected and enforced.

FATAL MOTORCYCLE ACCIDENTS - FLORIDA WRONGFUL DEATH ACT

The life of a motorcyclist or rider on a motorcycle can end quite quickly and abruptly as a result of the negligence or fault of other drivers. Due to the size disparity between motorcycles and passenger/commercial motor vehicles, a motorcycle crash can be quite traumatic to the motorcyclist. It is extremely sad to see a motorcyclist, who was full of life and love of family, community, and country, die as a result of the careless driving of another person.

When a motorcyclist is the victim in a fatal motorcycle accident in the State of Florida, a Florida Wrongful Death claim or case can be pursued on behalf of the statutory survivors of the motorcyclist. There are particular rules and procedures to follow to

pursue a wrongful death case or claim. Section 768.20, Florida Statutes - Parties, provides as follows:

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate.

Fatal motorcycle accident cases are handled differently than those in which the motorcyclist survives. In most cases, the damages are based on the survivor's loss of the family member. There can be damages for medical bills, funeral expenses, and loss of net accumulations which is essentially the amount that the decedent would have saved or invested during his or her lifetime. However, the focus of most cases is on the emotional pain, suffering, and mental anguish of the surviving family members who qualify as statutory survivors under the Florida Wrongful Death Act.

A fatal motorcycle accident can, and does, have a ripple effect through the family, neighborhood, and community. However, the recoverable damages are limited by law to the following relatives:

Spouse of the decedent;
Minor child of the decedent;
Adult child of the decedent if there is no surviving spouse;
Parent of minor child; and
Parent of adult children (if there are no other statutory survivors).

It should be noted that for purposes of the Florida Wrongful Death Act - a minor child is defined as a child under the age of 25. Under the Florida Wrongful Death Act, there is no difference between the rights of an adopted child and a biological child of the decedent.

Fatal motorcycle accidents can have an impact on statutory survivors for the rest of the survivor's life. The damages or compensation are based in part on the relationship between the statutory survivor and the decedent. A case is evaluated based on the quality of the relationship and the expected emotional loss over the lifetime of the survivor. While the Florida Statutes provide many details and procedures to follow, there is no formula per se for how much money should be awarded each statutory survivor of the decedent. In some cases, the amount of damages or compensation obtained may be defined, as a practical matter, by the amount of available liability insurance in place for the claim or case.

For instance, let's say that the at-fault driver had a Bodily Injury insurance policy in place in the amount of \$50,000. In most Florida Wrongful Death cases, the value of the survivor's pain and suffering typically well exceeds \$50,000. But most wrongful death cases settle for the policy limits if there are no other assets available to compensate the survivor or his or her losses.

Fatal motorcycle accidents involve a number of issues and challenges. As such, the family of the motorcyclist should retain the services of an experienced Florida Motorcycle Accident Attorney for guidance, advice, and legal representation.

WHAT IS THE FLORIDA WRONGFUL DEATH ACT? HOW DOES IT WORK?

What is a Wrongful Death Act? How does it work in Florida? These are two excellent questions. The wrongful death law sets forth in detail that can bring forth a legal action for the wrongful death of a family member, what damages can be pursued, and which people qualify as beneficiaries or survivors in a wrongful death case. Businesses and insurance companies have their own attorneys, and so should a family member dealing with the stressful aftermath of the wrongful death of a loved one.

Wrongful death laws are not necessarily fair or rational. Some of the provisions of wrongful death laws have been challenged in court, but most challenges have failed. The statutory scheme set forth by the state legislature is the law of State of Florida and must be followed in order to be able to pursue a claim for compensation and damages when a loved one dies due to the fault or negligence of another.

The standard of proof in a wrongful death case is similar to that of other civil cases. The plaintiff must prove the facts supporting the elements of the wrongful death case by a preponderance of the evidence. This is the "more likely than not" standard of proof which is different than the proof required in a criminal case. On a scale, the authors would state that preponderance is equal to or greater than 51%. The standard of proof in criminal cases requires that a prosecutor must satisfy his or her burden of proof "beyond a reasonable doubt." (equal to or greater than 99%) While the standard of proof is not as strict in a civil case, it can often be challenging to prove that negligence was the "more likely than not" cause of death in a civil case.

WHAT FACTORS ARE CONSIDERED IN AWARDING DAMAGES/COMPENSATION FOR THE WRONGFUL DEATH OF A RELATIVE IN THE STATE OF FLORIDA?

When a person dies as a result of the negligence or carelessness of another person, business, or governmental entity, the surviving family members (typically a spouse, parents, and children of the decedent) often face many challenges and obstacles. When a death results from carelessness, recklessness, or even the intentional acts of others, the surviving family members should consider seeking legal advice and consultation from a Florida Motorcycle Accident Attorney to discuss pursuit of a claim or case to recover for the damages associated with the wrongful death of the accident/injury victim.

A question that is often posed to us as Florida Motorcycle Accident Attorneys is as follows:

How are damages measured or calculated for a person who suffers the loss of a family member due to the fault or negligence of others?

In a way, you can never really measure or calculate the loss or death of a loved one to a family member caused by the negligence or carelessness of a driver. This is not the legal answer to the question, but it is more of a practical and moral one. Damages and loss associated with the death of a family member is something that can never be planned for or imagined prior to the tragic event. Florida case law and Florida Statutes set forth some standards and guidelines for the measure of such damages to the qualifying surviving family members.

The following factors may be considered by a judge or jury deciding the award of damages in a wrongful death case:

- Nature of the relationship between the decedent and the surviving family member(s);
- Quantity of time spent between the decedent and surviving family member(s);
- Statistical life expectancy of the injury victim who died had the automobile accident never taken place;
- Life expectancy of the surviving family member(s);
- Emotional loss experienced by the surviving family member(s) from the time of the death through trial; and
- Emotional loss experienced by the surviving family member(s) expected in the future.

There are many other factors that may be considered as well. Each wrongful death case must be evaluated on its own facts and circumstances. It is a family member's worst nightmare to have to say "goodbye" and attend the funeral of a loved one, especially when the motorcycle accident was preventable. Negligent driving can involve speeding, driver distraction, and other forms of carelessness or inattention. When a person dies or is injured in a motorcycle accident, there are often many issues and challenges faced by the family. It is stressful enough dealing with the accident itself, but in the aftermath of such tragedies, there are often additional stressors related to medical care, medical bills, and when a death occurs, the loss of the loved one and the profound impact it can have on the family and friends.

When a person dies as a result of the negligence of another party, the surviving family members can pursue a cause of action for the wrongful death of the victim. The Florida Wrongful Death Act details the type of damages that can be pursued, and it specifies the family members who qualify as "survivors" for purposes of being eligible to receive compensation or damages in a wrongful death case.

WHAT ARE THE LEGAL RIGHTS OF FAMILY MEMBERS IN A FLORIDA WRONGFUL DEATH CASE?

Florida Motorcycle Accidents are reported and seen on a daily basis in virtually every community. Tragically, some of these accidents result in the death of a driver and/or passenger. When a person dies as a result of an motorcycle accident, a wrongful death case can be pursued if it can be established that the victim died as a result of the negligence of one or more of the other drivers involved in the accident.

As a passenger, there is rarely any fault to be apportioned to the passenger. As such, when there is fault, the family of the deceased passenger typically has the legal right to pursue the full amount of damages as permitted under the Florida Wrongful Death Act.

The potential compensation associated with a wrongful death case involves those damages related to the pain and suffering of the surviving family members entitled to pursue a claim under the applicable state law. The family members deemed "survivors" under Florida law depends in part on the age of the decedent, marital status of the decedent, age of the surviving children (if any) of the decedent, and whether the decedent was survived by parents.

ARE THERE LIMITATIONS OR CAPS TO WRONGFUL DEATH CASES IN THE STATE OF FLORIDA?

Are there limits or caps on damages that apply to wrongful death cases involving the death of a driver or passenger in a Florida Motorcycle Accident? The answer to this question, like many questions that are commonly posed to us is. . . “that depends.” It depends on many factors such as the type of case, the defendants involved, insurance coverage, and the Florida Wrongful Death Act. For most Florida Wrongful Death cases resulting from a motorcycle accident, there are no legal or statutory limitations to recovery in a Florida Wrongful Death case. There are some exceptions to this general rule for a Florida Wrongful Death case against a government entity.

From a practical standpoint, consideration should be given to the amount of insurance coverage in place and the amount of assets available from the defendant who causes a death that falls under the Florida Wrongful Death Act. For instance, if a person dies as a result of a motorcycle accident and the at-fault driver and owner only had \$100,000 in coverage, there is a good chance that a settlement will be reached or paid in the amount of \$100,000 - the automobile insurance policy limits. Is \$100,000 adequate compensation for person who lost a family member due to the careless and negligent acts of another person? The answer to this question is certainly: No. However, practical factors are typically considered in making a decision as to the settlement since it always depends on the facts and circumstances of each case.

WHAT TYPES OF INSURANCE COVER DAMAGES FOR A WRONGFUL DEATH CASE RESULTING FROM A FLORIDA MOTORCYCLE ACCIDENT?

When a person dies and their death is caused by the careless or negligent acts of others, the qualified surviving family members can seek damages for their losses. When pursuing a wrongful death case, there may be various forms of insurance that may be available for the surviving family members to pursue.

The available types of insurance may include the following:

Bodily Injury Insurance Coverage. This coverage is available to victims who have been injured or the families of victims who have died as a result of the negligent or careless driving of another person. The automobile insurance policy limits for Bodily Injury coverage can be as low as \$10,000 or can be well in excess of \$1,000,000. In most

situations, the owner of the vehicle whose driver caused an accident that results in the death of a person will also be liable under Florida's Dangerous Instrumentality Doctrine. The amount of Bodily Injury insurance coverage will depend on the type of policy (personal or commercial) and the premium paid by the driver of vehicle or owner of the vehicle.

Uninsured or Underinsured (UM/UIM) Motorist Insurance Coverage. As discussed earlier in this book, a UM/UIM insurance claim can be pursued by the estate of the deceased person when a wrongful death occurs. UM/UIM, which stands for Uninsured or Underinsured motorist coverage, can be pursued by the estate of the deceased person for a vehicle occupied by the injury victim at the time of the accident or for a vehicle owned by a resident relative of the injury victim. There may be more than one UM/UIM policy that applies to a particular accident. UM/UIM coverage can be pursued where a person is injured or killed due to the negligence of another driver/owner who either did not carry Bodily Injury insurance coverage or who carried insufficient Bodily Injury coverage to compensate the statutory survivors of the decedent for their damages associated with the death of their loved one.

For instance, let's say that the at-fault driver and owner had a \$100,000 Bodily Injury policy and the decedent's survivors had a \$50,000 Uninsured Motorist (UM) policy. If it can be shown that the victim died as a result of the negligence of the at-fault driver/owner, the Bodily Injury insurance adjuster would likely pay out the available \$100,000 in Bodily Injury coverage. Thereafter, the Uninsured or Underinsured Motorist insurance adjuster would likely pay out the \$50,000 in UM/UIM coverage, assuming of course that the damages to the surviving family members or the estate of the decedent warrants tender of such policy limits.

Self-Insurance. When a business is "self-insured," it means the business has a regulated pool of money that is set aside to pay compensation for claims made against the company and its employees. There is usually no insurance policy in place to speak of, but the pool of money is supposed to cover the injuries or damages caused by the negligence of the business and/or its employees. If a small business has a small self-insured retainer or no insurance or has no assets, it may prove to be quite difficult to collect on a judgment against the small business even if a case of negligence or carelessness can be proven. Larger companies that are self-insured, like Wal-Mart or Disney World, have plenty of assets and resources to pay for a settlement or judgment for damages.

Watching Out for Motorcyclists





SETTLEMENT, COMPENSATION, AND DAMAGES

WHEN SHOULD A PERSONAL INJURY LAWYER BE HIRED FOR AN INJURY VICTIM?

When a person is injured as a result of an automobile or truck accident, one common question that arises is as follows:

When should an attorney be hired for the injury victim?

The simple answer to this question is, "Now, or as soon as possible and practical!" It is important for the injury victim to understand the rights and remedies available under the laws of the State of Florida.

Florida Motorcycle Accident Attorneys handle these types of injury cases on a contingency basis and provide a free consultation to victims and their family members regarding these matters. Because of this, an injury victim will not need to pay any money to consult with the attorney. If the Florida Motorcycle Accident Attorney believes the case has merit and can likely result in compensation for the injury victim, the attorney will typically accept representation and proceed forward with the case. When a person is injured, there are many pressures initially placed on them. Insurance companies will contact the injury victim soon after the accident to obtain a statement and information regarding the accident and related injuries. Medical bills will start to accrue. Evidence will be lost which could potentially help prove a claim or case. Prior to providing the insurance company with a statement - whether it is the other driver's insurance company or the victim's insurance company - the injury victim should consult with a Florida Motorcycle Accident Attorney as to the appropriate course of action, and to assist with preserving evidence and ensuring the medical expenses are covered by applicable insurance or alternative means.

HOW CAN A PERSON BE COMPENSATED FOR INJURIES AND DAMAGES RESULTING FROM A FLORIDA MOTORCYCLE ACCIDENT?

Following a Florida Motorcycle Accident, the injury victim often incurs significant bills, economic losses, and personal injuries. If a person is injured as a result of the negligence of a driver, damages and compensation can be pursued by the injury victim. These damages include some of the following: past and future medical expenses, past and future pain and suffering, past lost wages, loss of future earning capacity, past and future loss of enjoyment of life, and other damages.

Insurance may ultimately compensate an injury victim for these damages, but the amount of compensation available and payable will depend on the insurance and the type of injuries involved.

It is often helpful to have the assistance, advice, and representation of a Florida Motorcycle Accident Attorney in order to guide the person through the insurance issues, legal rights, and damages related to a motorcycle accident. Compensation for pain, suffering, loss of enjoyment of life, and medical bills not otherwise covered by Med Pay or private health insurance, can be pursued against the BI insurance coverage and/or the UM/UIM coverage. The value of any claim or case will depend on the diagnostic testing results, permanency of the injury, and the short and long term impacts of the injury on the injury victim's life. From a practical standpoint, the value of any case may be affected by the policy limits of the respective insurance policies.

HOW LONG SHOULD AN INJURY VICTIM TREAT AFTER A FLORIDA MOTORCYCLE ACCIDENT, BEFORE A DEMAND FOR COMPENSATION IS SENT OUT TO THE INSURANCE COMPANY OR DEFENDANT ON BEHALF OF THE INJURY VICTIM?

This is a question that is posed by many motorcycle accident clients who are in need of compensation for damages related to personal injuries suffered in a Florida Motorcycle Accident. Like many legal and insurance questions, the answer is that "it depends" on many factors. For most cases, however, a client will typically treat until the point in time when their medical providers declare them to be at Maximum Medical Improvement (MMI). This is the point in the medical treatment when the main treating

medical providers believe that the patient has plateaued with respect to his or her medical care. Even with further care and treatment being necessitated after reaching MMI, it is usually not expected that the patient will have any significant change for the better in his or her medical condition. Of course, where future surgery or other invasive procedures are being recommended by the patient's doctors, either MMI would not be declared, or the doctors would typically render an opinion that the victim is at "non-surgical" or "pre-surgical" MMI and comment on the necessity for future care and treatment to a reasonable degree of medical probability.

For some clients, depending on the severity of the injuries and the amount of available insurance coverage, an early settlement demand can be submitted to the insurance company(ies) even before the patient reaches MMI. This is true where the medical treatment and damages clearly warrant a demand for the insurance limits. The decision as to when to send out a settlement demand on a personal injury case should be left to the Florida Motorcycle Accident Attorney after having a discussion with the client. Of course, the client always has the ability to give directions and requests to the attorney and/or to disregard the attorney's recommendations. But, it is usually most prudent for the client to consider and then follow the recommendations of the attorney who has years of experience in handling personal injury cases. After all, isn't that why you hired them?

The timing of a demand should not be confused with other timing elements of a case. For instance, the Statute of Limitations (SOL) refers to the time period in which a lawsuit must be filed before legal rights are waived regarding a particular motorcycle accident or another type of incident causing injuries. The SOL is the outermost time to file a lawsuit. A demand can be sent after the lawsuit has been filed or before. A demand or lawsuit cannot be sent or filed after the SOL. The unfiled lawsuit or claim expires on the SOL date.

WHAT FACTORS ARE CONSIDERED IN A FLORIDA MOTORCYCLE INJURY CASE FOR SETTLEMENT PURPOSES?

When a person is injured in a Florida Motorcycle Accident, there are many factors that are considered when trying to value a case. Each personal injury case should be evaluated on its own facts and merits. Every person is different. Similarly, every personal injury claim or case is different. Individual attention should be given to the case by an experienced Florida Motorcycle Accident Attorney who will represent the individual in their pursuit of damages and compensation for the injury. Attention should also be given to the patient by any person involved with assisting, treating, or counseling a

victim for their injuries. There are various factors that may be considered when trying to value a given case.

Liability(Fault). Liability refers to the cause of the incident or accident. Typically, a plaintiff or claimant must prove that he or she was injured due to the fault or negligence of another person or business. In other words, the plaintiff or claimant must prove that a person or business failed to do something in a reasonable manner or acted in a careless manner which caused injuries or damages. In essence, establishing fault requires a showing that, with better care and attention on the part of the at-fault person or business, the injuries would have been avoided.

Damages. Damages refer to the losses that are sustained due to the injuries. Damages can be classified as either economic damages or non-economic damages. Economic damages are those monetary expenses or losses that are incurred in the past or future due to the injuries. Economic damages are expenses that can usually be calculated and estimated with some reasonable certainty as follows:

- Past Medical Bills;
- Future Medical Bills;
- Past Wage Loss (when applicable);
- Future Wage Loss/Lost Earning Capacity (when applicable); and
- Education/Tutoring/Retraining Expenses (incurred due the injuries).

Unlike economic damages, there is no strict formula and no set number for non-economic damages. Non-economic damages, which are also available in the past (date of accident to present) and in the future (present date up through statistical life expectancy), typically include the following:

- Pain;
- Suffering;
- Mental Anguish;
- Loss of Enjoyment of Life;
- Loss of Companionship; and
- Loss of Services.

The value of economic and/or non-economic expenses will depend, in part on the following factors:

- Age of the injury victim;
- Condition of the injury victim prior to the incident/accident;
- Permanency of the injuries;
- Severity of the injuries;
- Impact on activities of daily living;
- Impact on cognitive abilities;
- Impact on education; and
- Impact on the current and future income/employability.

The evaluation of a personal injury case can be quite complicated and often requires the services of a Florida Motorcycle Accident Attorney to evaluate the case and to provide advice and recommendations regarding the available legal options, settlement opportunities, and recommended course of action including litigation and trial.

HOW LONG WILL IT TAKE TO SETTLE A PERSONAL INJURY CASE FOLLOWING A MOTORCYCLE ACCIDENT?

The answer to this question, like many legal questions, is that “it depends.” Some motorcycle accident claims are settled soon after the accident when the injuries are very clear and the insurance limits are low. In most instances, however, it will take some time for the doctors to properly evaluate, diagnose, and treat the injury victim for a motorcycle accident-related injury. It is not uncommon to have a patient or client treat for many months or even years following a motorcycle accident. In some cases, the injuries might even require lifelong care when the injury victim has permanent or catastrophic injuries and symptoms including chronic pain, loss of a limb, a traumatic brain injury, paralysis, and/or the inability to care for oneself. Treatment can also be extended when a person requires evaluation and care from a specialist like a neurologist, orthopedic surgeon, pain management doctor, or neurosurgeon. It is important for a person to have competent medical care and treatment in order to assess the nature and extent of injuries and complications brought on by a motorcycle accident.

In most personal injury cases, the Florida Motorcycle Accident Attorney will wait until a person reaches Maximum Medical Improvement (MMI). It is usually at this point in time that the doctors are able to summarize the care and treatment and to also issue a final report as to permanent impairment, when applicable. Generally speaking, it will take 3 to 6 months for most simple cases. It will typically take 6 months to 1 year or longer for cases involving more extended medical care and treatment. It will usually take 1 to 2 years or longer if litigation is required in order to pursue a case in court to seek or collect damages for accident-related injuries. It is important for a person to have the advice, consultation, and representation of a Florida Motorcycle Accident Attorney to guide the person through the claims process, and when necessary, the litigation process.

HOW MUCH MONEY SHOULD A PERSON RECEIVE FOR COMPENSATION FOR PAIN AND SUFFERING RESULTING FROM A PERSONAL INJURY?

A person who sustains permanent injuries or impairments in Florida should get damages for pain and suffering if the injuries are serious in nature. In determining the amount of pain and suffering damages, the Florida Motorcycle Accident Attorney will evaluate several factors involved in the case or claim. Insurance adjusters use their own models and methods to evaluate the value of an injury claim.

Serious or permanent injuries are dealt with differently than short-term, minor injuries. Coming back to the question, how much money should a person be compensated for pain and suffering as a result of a truck accident? This is a very open-ended and broad question. Each case should be evaluated based on its own facts and merits. There are a number of factors that are considered when determining fair and reasonable compensation for pain and suffering damages, including the following:

- Past medical treatment;
- Future medical treatment;
- Severity of the injuries;
- Permanency of the injuries;
- Medical care received;
- Medical care needed in the future;
- Recommendations for surgery;

- Performance of surgery;
- Visibility of the injuries;
- Effect of the injuries on activities of daily living;
- Effect of the injuries on education/schooling;
- Effect of the injuries on current employment;
- Effect of the injuries on future employment and career choices; and
- Other factors.

IS AN INJURY CLAIM OR CASE WORTH MORE WHEN CAUSED BY THE NEGLIGENT DRIVING OF AN EMPLOYEE OF A BUSINESS OR CORPORATION?

When a person is injured as a result of the negligent driving of an employee of a business or corporation, a claim or case is often pursued against the negligent driver and the business/corporation. As Florida Motorcycle Accident Attorneys, we are often asked the following question:

Is the case worth more since a business or corporation may be liable for the personal injuries?

The simple answer to this question is, "No." The case is not worth more just because a business or corporation is involved. However, businesses or corporations tend to possess more compelling business reasons and interests than individuals to carry liability insurance in order to protect their assets and minimize the business or its partners from personal liability. Each case or claim should be evaluated on its own merits, facts, and circumstances. As with any other claim or case, regardless of whether there is insurance coverage and regardless of whether the defendant is a corporation or an individual, the value of the case is based on a number of factors including the following:

- Past medical bills;
- Future medical bills;
- Medical diagnosis of injuries;
- Diagnostic testing results;
- Type of treatment received;
- Type of treatment needed in the future;
- Severity of the personal injuries;
- Permanency of the personal injuries;
- Visibility of the injuries;
- Whether surgery was performed;
- Effect on activities of daily living;
- Effect on education;
- Effect on earning capacity;
- Life expectancy of the injured person; and
- Other Factors.

The value of the case should not be based on the identity of the defendant (individual or a business) or the amount of insurance. However, the collectability and settlement value of a case may be based on both the value of the case AND the financial resources of the Defendant, and the amount of available insurance. As such, there is a distinction between value and collectability. These are just two issues that are carefully evaluated and analyzed by a Florida Motorcycle Accident Attorney handling a case on behalf of an injury victim.

WHEN SHOULD A LAWSUIT BE FILED ON BEHALF OF AN INJURY VICTIM AFTER A FLORIDA MOTORCYCLE ACCIDENT?

Typically, a lawsuit is not filed immediately following a motorcycle accident. In most motorcycle accident cases or claims, it will take time to determine the nature and extent of the injuries and the resulting medical treatment, the extent



and amount of any wage loss, and the extent of any other damages. It is also helpful to know in advance, prior to filing a lawsuit, the extent of insurance that may be available to compensate the injury victim for his or her past medical bills, future medical bills, past pain and suffering, future pain and suffering, past wage loss, and future wage loss.

When the medical bills, medical records, and any related documentation is obtained on a particular accident case, a Florida Motorcycle Accident Attorney can evaluate the extent of damages and the available insurance coverage to make a determination of the proper courses of action. In most motorcycle accident cases, a pre-suit demand is sent to the at-fault driver's insurance carrier in order to attempt a pre-suit settlement for the client. Many cases are settled before a lawsuit is filed. However, some claims are not settled if the settlement offer is not sufficient to fairly compensate the injury victim. Under those circumstances (and assuming there is sufficient insurance coverage available to cover a judgment), a lawsuit should be filed if warranted to enforce the legal rights of the injury victim. It can be a difficult decision to make between accepting a pre-suit settlement offer or proceeding forward with a lawsuit and potentially protracted and costly litigation.

Before any decisions are made as to a settlement offer, the injury victim should discuss the case/claim with a Florida Motorcycle Accident Attorney. No releases should be signed until the injury victim is fully informed of the value of the case and legal rights to compensation.

HOW MUCH SHOULD AN INJURY VICTIM SUE FOR IN A PERSONAL INJURY LAWSUIT?

When a person suffers personal injuries, a lawsuit can be filed in order to enforce the rights to compensation and damages of the injury victim. A question that arises from many cases is as follows:

How much should I sue for in my personal injury case?

In most Florida personal injury cases, it is merely alleged in the complaint that the plaintiff is seeking more than \$15,000 in damages as opposed to a specific amount. This is a statutory minimum and in no way reflects the true value of the case. The process of litigating a personal injury case is quite complicated and confusing. Because of this, it is important for personal injury victims to retain the services of a Florida Motorcycle Accident Attorney for consultation, advice, and legal representation.

In evaluating a personal injury case, there are several factors that may be considered in determining the value of the case including the following:

- Past and Future Medical Bills;
- Past and Future Lost Wages;
- Loss of Earning Capacity;
- Past and Future Loss of Services;
- Past and Future Mental Anguish;
- Past and Future Pain and Suffering; and
- Past and Future Loss of Enjoyment of Life.

Each personal injury case should be evaluated on its own merits. It is important that all factors are considered before making any decisions as to a settlement and/or the litigation of any personal injury case that may result from a motorcycle accident.

IS A PERSONAL INJURY SETTLEMENT TAXABLE FOR INCOME TAX PURPOSES?

When a personal injury case is settled and the claimant or plaintiff has suffered physical injuries, the proceeds from the settlement typically are not taxable for purposes of income tax. This is because the settlement is considered a casualty loss. In other words, a personal injury settlement is generally not considered to be revenue, income, or profit by any means.

In some cases, however, it may be helpful to discuss the taxable consequences of a personal injury settlement with a CPA (Certified Public Accountant) or a tax attorney when there is significant compensation for the replacement of income as part of the settlement. However, in most injury cases, the conventional wisdom is that the net proceeds from a personal injury settlement are not taxable.

Watching Out for Motorcyclists





CLOSING

Following a motorcycle accident, there is a tremendous amount of stress, both emotionally and physically, for the injury victim and his or her family. With most injury matters, the victim needs help in some form or another. Whether it is the friend who cooks a meal, a neighbor who assists with transportation or child-care, or the caring doctor who takes that extra time to properly diagnose the injury or just provide an ear to listen, an injury victim typically is not fully capable of dealing with the aftermath of a motorcycle accident alone. This is especially true when there is a serious personal injury and ongoing medical treatment and complications.

This book titled - **Watching Out for Florida Motorcyclists - Freedom - Liberty - Justice - Legal Rights of Injured Bikers** - was written to provide injury victims and their families with information and practical advice in the aftermath of a motorcycle accident. The laws and procedures applicable to accidents and insurance can be quite confusing and complicated. While common sense and logic can help an injury victim with some matters, laws and insurance policies have many twists and turns and nuances.

Insurance companies and businesses have their own attorneys, risk managers, and claims adjusters in place. The injury victim also deserves to be backed and supported by a team of advocates who are there to protect and enforce his or her important legal rights.

Be strong and proactive in dealing with the challenges, but use the help that is available to you. Hopefully, this book has helped answer questions you may have regarding a motorcycle accident, but keep in mind; it is far from a "recipe" or "do-it-yourself" manual for the proper handling of a personal injury claim or case. It is important to note that while each case is different, each client deserves to have an attorney or advocate who has the experience, time, patience, skill, and compassion to get the job done in the right way for the client and his or her family members. This book is just an overview of some of the various issues that may arise when a person is injured in a motorcycle accident.

Please feel free to use us as resources when there is a personal injury. Don't go it alone. As Florida Motorcycle Accident Attorneys, it is our mission and goal to Give a Voice to Injury Victims and Their Families.



GIVING A VOICE TO INJURY VICTIMS AND THEIR FAMILIES