



# FLORIDA PERSONAL INJURY GUIDE

*Steps to Take After a  
Serious Accident*

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**MH**Morgenstern  
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The worst feeling is being seriously injured because someone else was acting carelessly. You may have been minding your own business when someone did something or failed to do something and that resulted in you getting really hurt. We understand how frustrating that can be. We want to help you recover both physically and financially. We can advise you on specialists to look at your injuries. We will dedicate our energy to fighting to

protect your rights. At Morgenstern and Herd, PA. we can get you the compensation that you deserve. Do not hesitate to call our office for a free consultation.

## WHAT INJURIES CAN BE COMPENSATED?

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Personal injury is a term that encompasses injuries you may obtain due to the negligence of another. Injuries that are not covered would be if you dropped a weight on your foot in your home to not fault of anyone else. However, if you were to drop that weight on your foot at the gym because of faulty equipment, then you may have a personal injury claim.

Here are examples of personal injuries that you can seek compensation for:

- » Slip and falls
- » Dog bites
- » Bike accidents
- » Pedestrian accidents
- » Brain injuries
- » Electrocutation injuries
- » Boat accidents

We concentrate our practice on personal injury litigation and represent injured parties of all of these accidents. These accidents can cause absolutely devastating injuries. We are terribly sorry that you have to deal with these injuries, but we want to ensure that you are taken care of. Each accident might require

a different specialist. We are well-verse in physicians who we trust to care for you and can suggest who you might want to see.

It is of the utmost importance that you seek medical attention. When injuries go left unchecked, they can worsen and cause life-long complications. Even if you think you just got whiplash from a car accident, or a small bite from a dog, those things can escalate. You might have spinal cord damage from your car accident and that dog might have been infected with rabies. Also it is important to seek medical attention so that you have your injuries documented. We need to be able to prove to the insurance company that you deserve compensation because of your injuries. The amount of compensation that you will be awarded is going to be based on information about your injuries. We need to determine what is injured, how badly you are injured, and how long it is going to affect you.

## HOW COMPENSATION WORKS IN FLORIDA

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In order to get compensation, there are several things that we need to do. This can be easily accomplished with the help of an experienced attorney. Firstly, there needs to be proof of negligence. You need to be able to show that the person you are making a claim against did something wrong. Either they did not do their job to protect you (an example would be a property owner not taking care of a tripping hazard) or they did something wrong that caused you harm (including running a red light or failing to yield).

The best ways to ensure you have what you need to prove there was negligence includes writing down everything you know about the accident and how you got your injury. You should also make sure you know and have recorded the names of witnesses and all parties involved in the accident. At the scene, you should call 911 and get them to record the incident. Lastly, photographs are extremely useful evidence. Take as many of the scene of the accident and your injuries as possible. If it was a slip and fall, take pictures of what made you fall. If it was a dog attack, take a picture of the open and unlocked gate the dog came through.

Once you have covered all your bases, your attorney can get to work on getting compensation. The one unique situation you will experience is if you were

involved in a car accident, you will be able to collect No-Fault from your own insurance policy. It will cover up to \$10,000 of your damages, but if that doesn't cover your damages, will can seek a claim.

Personal injury claims in Florida are guided by the rules of comparative negligence. That means you can have your award reduced if you are found to be at fault for the accident. There are levels to this reduction. If you were found to be at fault for 75-90% of the accident, you will be barred from collecting more than \$200,000. If you were found to be responsible 50-74% of the accident, your compensation is capped at \$500,000. Lastly, if you were 49% or less at fault for the accident, you can collect up to \$1,000,000. Your attorney can protect your rights so that you are not at risk of having your compensation massively reduced.

## FREQUENTLY ASKED QUESTIONS | FLORIDA PERSONAL INJURY GUIDE

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### *How do I select an attorney for my injury claim?*

Having done this for almost 35 years, if I was looking for a personal injury lawyer, the first thing I would do is look to that person's experience in the area that you expect the case to be in. For example, if it's a motor vehicle case, you want to have an attorney that has handled motor vehicle accidents, has had experience handling motor vehicle accidents, and has been to trial trying motor vehicle accident cases.

You want a firm that's large enough that they can adequately fund your case if you need an expert. For example, either on the liability end, some engineer to talk about why this accident and this injury occurred, and also on the medical end to bring your doctors to trial or to take their depositions by videotape to be



presented to the jury at trial. These experts, both mechanical or engineering and medical, are very expensive, so the law firm has to be able to have the financial wherewithal, not just the experience, to support the bills that are going to be occurred in getting your case, if needed, to trial.

You need to pick out an attorney with a temperament personality that you can get along with because it's very important that the attorney and the client are able to communicate with another and to work with one another. This is because this is a fairly involved and sometimes long procedure from the time of an accident until the time that a trial, if it's needed, is concluded.

You're really looking for someone with experience – sometimes also you need to look at the undergraduate degree. If this is going to be an area where there's an engineering issue, you may want someone that has an engineering undergraduate degree. You also need to make sure that the law firm is adequately funded, that they can take these cases to trial. You want to know about whether or not they do go to trial because many attorneys will advertise and hold themselves out as trial lawyers and they don't go to trial. They settle everything. If you get with a law firm that settles everything, over time the insurance companies know who these law firms are, and they throw them crumbs so to speak knowing that they are not the hammer that will take them to trial. You need to go with a law firm that has the ability, and the history, and the financial wherewithal to take your case to trial in case it needs to be tried. Those are some of the things that I would look for if I was picking a personal injury lawyer for a personal injury claim.

### *Should I receive immediate medical care?*

A claimant can pursue a cause of action, either informal as a claim or in litigation, even if you don't seek medical attention right away. Most people try to see if they're going to recover from their injuries without seeking medical attention. I think insurance adjusters, defendants, and especially juries understand that reasonable people don't always seek medical attention right away.

### *What impacts the value of a personal injury claim?*

There are a number of factors that impact the value of your personal injury case: first, the injury themselves, secondly, the manner in which the injury occurred,

and the evaluation of the fault of the person who injured you. Additionally, insurance companies and defendants look at the background of the claimant, whether or not you've had felonies in the past, whether or not you've had past injuries.

## *Can pre-existing medical conditions affect my claim?*

Pre-existing conditions can impact your personal injury case. We call that the eggshell plaintiff. If you are injured and those injuries are made no worse, then you probably don't have an injury claim, but in most cases, pre-existing injuries can be made much worse and permanently worse so that you could recover for an exacerbation of your pre-existing injury.

## *How long do I have to file a claim?*

For most personal injury claims, you have four years from the date of the event within which to pursue a claim. There are exceptions to that. For example, if you are injured in a motor vehicle accident or a collision and the adverse driver has no coverage but you have underinsured or uninsured motorist coverage, you have five years to bring that claim against your insurance company because that's a contractual claim. Medical malpractice claims, which are also considered personal injury claims, there's a two-year statute of limitations from the time that you knew or reasonably should have known. The same in product liability; claims are four years.

## *Can I make a claim for emotional distress?*

In most cases, one of the potential elements of damages is mental anguish or emotional distress. There are a few causes of action where emotional distress is not available in some wrongful death cases and in some injury cases involving maritime or admiralty law or even Federal Employers Liability Act (FELA), a railroad worker hurt on the job. There are situations where emotional damages may not be available to let's say family members, spouses, children, but for the most part, emotional damages or mental anguish is available.

One of the things you should understand about mental anguish is that some people may have prior treatment with a psychologist or a psychiatrist, and what the defense attorney will try to do is bring up that prior treatment with a psychologist or a psychiatrist to basically claim that your emotional problems, your mental anguish, are really preexisting. They're just problems that you had prior to this accident, prior to your injuries, and sometimes the effect of that prior psychological or psychiatric treatment can impair your ability to get a fair shot at trial. Sometimes your attorney may discuss with you the possibility of dropping your mental anguish claim in order to keep the psychological or psychiatric records out of evidence, which will oftentimes benefit you in the prosecution of your case.

By and large, emotional damages, mental anguish is a recognized element of damages in most causes of action.



## *What are the steps in an injury claim?*

Once you're involved in your accident and you're injured, you're going to get medical treatment, and at some point in time, your physician will likely say you have reached what we call maximum medical improvement. In other words, from the time of the accident, you were improving, and all at once you plateaued. You're not getting any worse, you're

not getting any better; you've reached what we call MMI, Maximum Medical Improvement.

It's usually at that time that a claim package will be put together called a settlement demand letter. The attorney will put together a narrative that explains usually to the insurance company for the at fault party what happened in the accident, what damages you suffered both in terms of your injury, in terms of its effect on you – the medical bills, the wage loss, your non-economic damages – it'll talk about the property damage of the vehicles that were involved. Generally, that settlement demand letter will go out to the at fault party's insurance

company with a deadline, usually 30 days. You're asking them to amicably resolve the case within that 30-day period. If for whatever reason, you're not able to amicably resolve it – let's say that the insurance company says we just don't see the liability here; we don't think our guy's at fault, or they say we don't think your person's injured as badly as his doctors say they are.

Insurance companies generally fight these cases in three ways. The first way is they say the accident wasn't our fault. The second way they defend it is they say well, the accident may have been our fault to some extent or maybe totally, but the impact from the accident wasn't great enough that anybody could've been injured. The third way they defend these cases is they say well, the accident might've been our fault, maybe totally our fault, the impact was great enough that someone could've been injured, but your client's injuries are pre-existing; they're from the other two accidents they had from another slip and fall case, or they're what we call degenerative based on their age. In other words, it's from wear and tear on their body, not from the trauma from this accident.

Generally, that's how insurance companies defend these cases, so if you cannot amicably resolve your case for whatever reason, then suit has to be filed. Once suit is filed, generally a complaint is filed with the court, service is made on the at fault party, and their insurance company retains an attorney and comes in and defends them. They have to file what's called an answer, in other words, either admit or deny your allegations in the complaint, and they file an affirmative defense, things like you weren't wearing your seatbelt, you were at fault for the accident yourself, at least wholly or in part, that you had pre-existing conditions. Your attorney will answer those affirmative defenses, and the case at that point in time will be at issue.

At that point in time, the case moves into what we call discovery, where they can ask you questions called interrogatories. You have to answer them. They can ask for documents in what's called a request to produce. They can ask for medical records, medical bills, photographs of the vehicles and things like that. They can also take your deposition and they can ask you to be examined by a doctor of their choosing in what's called a compulsory medical examination.

After all this discovery is done, you then will go to a mediation to try and resolve your case amicably, and if your case cannot be resolved amicably, then your case is placed on a trial list, and it's tried.

One of the things that's important to remember in this whole process is generally the plaintiff's attorney is paid based on results, while the defense attorney is paid by the amount of time that he puts into the case, so sometimes we hear that the mantra of the defense lawyer is delay, delay, delay. Depending on the complexity of your case, you're probably looking at a minimum of a year before the case actually reaches trial. Keep in mind, if you go to trial and you get a good result, maybe a result that the at fault party's insurance company thinks is too good, they can always take an appeal, and that can tie your case up for at least two years into the future. It's a very difficult time question to ask how long will it take for my claim to reach fruition.

## *Will we have to go to trial?*

A lot of cases are settled in what we call pre-suit period. In other words, after the accident there is a police report, there are photographs, there are witnesses. You treat until you reach what we call maximum medical improvement, at least in the eyes of your doctors. A settlement demand is made to the at-fault party's insurance company. At that point in time a number of those cases can be amicably resolved. The insurance company and your attorney with your input decide that the claim ought to be resolved without reverting to a law suit. If the case cannot be amicably resolved, then your case is put in suit.

You go through a discovery process and eventually to trial. The statistics are that 90% plus of cases are settled, and that is still the same for those cases that are put in suit. In other words, more than 90 cases that are put in pre-suit are settled, and even those cases that are put in suit, 90% of them settle before you actually go to trial. The chances are that your case can be resolved amicably. However, it may require filing a suit and heading towards trial. Oftentimes those cases are, as we put it, proverbially settled on the court house steps. Again, your chances are better than 90% that your case will be settled.

## *How long will it take for my case to settle?*

I don't know if there's any reasonable timeframe. There are a number of factors that can affect the length of your lawsuit. The strength of liability, if the other side accepts liability, that's a factor that can cause your lawsuit or your claim to take less time. If your injuries are severe and it takes you longer to recover, that's going to affect the time period within which your claim can be resolved. Also, a number of factors in the lawsuit itself depending on what happens during the litigation. We have a Supreme Court guideline where the Supreme Court set up a timetable that they would like for cases to be resolved in once lawsuit is filed. That's 18 months, but the dockets are way more backed up than that, so very few cases can be resolved in 18 months to 2 years from the time that the litigation begins.

## CALL OUR OFFICE TODAY

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You are our priority when you call in to schedule a free consultation with one of our Tampa personal injury lawyers. We will fight to protect your rights, get you the compensation you deserve, and make sure that the insurance companies do not hassle you out of getting that. Please call us today. You deserve to recover the compensation rightfully owed to you.



## ABOUT THE AUTHORS

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### *Betsey Herd*

Attorney Betsey Herd is a Florida native. She was born in St. Petersburg, Florida and has lived here most of her life. Betsey Herd's personal experience drives her commitment to the safe practice of medicine, reform on behalf of the nation's frail elders, and litigation on behalf of victims of others'

negligence. Attorney Herd believes in medical provider accountability and fiscal responsibility, having worked for several years in the medical field.

After receiving her bachelor's degree in exercise science and a master's degree in cardiovascular physiology, Betsey Herd seemed destined for a career in the health industry.

She devised a screening program for corporate fitness centers and designed nurse education programs for a national chain of rehabilitation centers. Ms. Herd served as a clinical manager for one of the largest hospital systems in the country, Methodist Health System, and helped manage outpatient/inpatient rehabilitation programs nationwide with Cardiopulmonary Rehabilitation Centers. It was here that she developed an interest in law.

Betsey Herd has 23 years combined medical and legal experience, providing her with unique insight into the intersection of law and medicine, especially related to cardiac health.

Attorney Herd earned her bachelor's degree at the University of Florida, her Masters in cardiovascular physiology at Wake Forest University, and her Juris Doctorate at Memphis State University. Her practice areas include personal injury, automobile litigation, and medical malpractice.

Attorney Herd is the past president of the Tampa Bay Trial Lawyers Association (2006–2007), the past secretary of the Women's Caucus and an EAGLE program sponsor. She is a member of the Florida Justice Association (formerly the Academy of Florida Trial Lawyers) since 1997, has served on their Board of Directors from 2002–2009, and is the second woman to have served on the FJA Executive Committee. Attorney Herd has participated in legislative campaigns designed to promote consumer awareness since 2000. She has also presented at various auto negligence and medical negligence CLE seminars.

Attorney Herd spends a substantial portion of her time lobbying for victims' rights in Tallahassee. She has also testified before the legislature against laws proposed to restrict the rights of victims of medical negligence, and personal injury. She received the Secretary of Health's Award in 2004 for her service on a mammogram task force where the rights of undiagnosed breast cancer victim's rights were in jeopardy.



## *Dennis M. Morgenstern*

Dennis M Morgenstern concentrates his practice in the area of personal injury litigation, including automobile accidents, product liability, medical malpractice, and general negligence cases. He also represents railroad employees in claims under the Federal Employers' Liability Act (FELA), as well as seamen and longshoremen in claims under the Jones Act and Section 905(b) of the Longshore and Harbor Workers Compensation Act (LHWCA), for injuries incurred in the course of their employment.

After 16 years of practice in Pittsburgh, Mr. Morgenstern moved to Tampa in September 1998. Mr. Morgenstern graduated from the United States Military Academy at West Point (New York) in 1973. After six years on active duty in the Army, serving both in the United States and in Germany, he attended and graduated from the University of Pittsburgh School of Law.

Dennis M Morgenstern is a consistent supporter of Hillsborough County Bar Association programs, to include Ask-A-Lawyer and the Lawyer Referral Service. He is also a member of and active in the Tampa Bay Inn of Court, the Florida Justice Association, and the Tampa Bay Trial Lawyers Association.

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