



Law Offices of  
**MARTIN B. SCHWARTZ**  
MEMBER IN GOOD STANDING OF FLORIDA BAR SINCE 1991

Call Us Now  
**(813) 269-7421**  
FREE Consultation

## [Your Quick Reference for Florida Auto Accident Law](#)

At the Law Offices of Martin Schwartz, we are here to take care of your legal needs in the aftermath of an auto accident, but we also strive to be here to offer legal advice and counsel and simply, be a friend. If you need help finding medical providers, negotiating bills with them, dealing with your employer when you need to miss work to get medical treatment or even need advice on how to fix or replace your damaged vehicle, we are eager to help. Attorney Martin Schwartz was licensed in Florida in April of 1991 and continues to be an active member of the Florida Bar in excellent standing. You shall have the attorney's cell phone and if needed, both evening and weekend appointments are available.

Please take a look at our E-book to become familiar with the law and types of recovery you may be entitled to, regardless of whether or not you utilize our legal services or those of another qualified law firm. Call us for a free consultation and know your legal rights!!!

### **Law in Florida Regarding Auto Accidents**

#### **"No Fault" Benefits**

Florida is considered to be a "no fault" state for automobile related injuries. Every driver in Florida is required to have Personal Injury Protection (PIP) insurance coverage at a minimum of \$10,000. Florida statute 627.736 says that your auto insurance company is responsible for paying part of your medical bills and lost wages, no matter who is at-fault for the injury. PIP insurance covers 80% of medical bills and 60% of lost wages for any emergency medical condition, up to your minimum of \$10,000. An emergency medical condition is defined as a medical condition severe enough to jeopardize an individual's health, if he or she does not seek immediate medical attention. For an individual diagnosed with a non-emergency injury, the cap for his or her PIP benefits is lowered to \$2,500.

The state legislature also created a deadline in which you have to seek medical attention within 14-days after an accident. If you fail to get the proper medical attention from a hospital or licensed doctor, you can lose your no fault benefits. Additional benefits from your PIP insurance, among other things, includes mileage reimbursement for travel related to visits for medical reasons and

reimbursement if a medical condition does not allow you to drive, and you must pay a driver. PIP insurance does not cover massage therapy or acupuncture.

It is important to recognize the details of your PIP insurance coverage, including whether or not you have a deductible, if Med Pay benefits are available, and whether lost wage benefits are available. If someone else was at fault for the auto accident that injured you, you should hold that liable party responsible for any damages you suffer which are not covered by your PIP insurance. Thus, if you have medical bills and lost wages beyond what is covered by your PIP benefits, you may want to pursue getting those damages paid from the at fault driver's bodily insurance policy. If the at fault driver does not have a bodily insurance policy or the bodily insurance policy is not high enough to cover your damages, you would want to pursue excess damages through your own uninsured motorist policy, provided you purchased one. One is legally entitled to pursue other damages including present, past and future pain and suffering damages through a bodily injury claim, and an uninsured motorist claim, if applicable.

The Law Offices of Martin Schwartz offers free legal consultations to review your insurance policy and any claims you may have for property damage claims, loss of use of your vehicle, lost wages, the bodily injury insurance claim against the at fault driver, and an uninsured motorist claim, if applicable. Our office will advise you and guide you as to the best strategies for pursuing these claims and making yourself completely whole for any damages you or your family member has suffered, as the result of an auto accident.

### Comparative Fault

Florida is considered a comparative fault state. A comparative fault state is one that does not allow a person to recover damages from the percentage of their own fault. For example let's assume that Abby and Bob are in an accident, and Abby was determined to be 10% at-fault and has a case worth \$10,000 in settlement value. She can only recover \$9,000 from Bob, because she cannot recover the 10% she was at-fault. The insurance company will subjectively determine how much fault each party was liable for.

Insurance companies tend to sway the amount of fault distributed to an outcome most convenient for them. At the Law Offices of Martin Schwartz, we investigate and review your case to make sure that the percentage of fault assigned to you is fair and accurate. In many cases, we talk with witnesses and go to the accident scene, and look at damages to the vehicles to better assess how much fault should be assigned to each party. We will compare the amount of fault with the amount of damages, to make sure that you are fully compensated. Contact us to make sure your insurance company is not assigning too much fault to you.

## Settlements versus Trials

The Law Offices of Martin Schwartz, will work with you to get the outcome you want and deserve. Parties tend to favor settlements over going to trial because settlements are done quicker, are cheaper, and reach the goals of both parties. We are successful of getting out of court settlements for our clients. However, if the damages and policy limits are high enough and the client wants to litigate, we are prepared to take the case to trial.

A case settlement is when the two parties involved in the dispute negotiate with one another out of court. Often, settlement negotiations will be between your lawyer and the at-fault party's insurance company. To keep yourself better prepared for out of court settlement negotiations, it is best to keep a record of your medical expenses, out of pocket costs, and how the accident has affected your daily living activities (perhaps through a journal or notes) . Once we gather enough information to prove how much loss you have suffered, we will be able to negotiate a fair settlement for you. We may also need to negotiate with the at-fault party's insurance for things like: pain and suffering, medical expenses not covered by your PIP insurance, lost wages not covered by your PIP insurance, and loss of consortium. It is important to know that all settlement terms are to be finalized by you, the victim. If you are not happy with the terms of settlement, we are prepared to bring the case to trial for you.

## **Damages You May Seek**

### Property Damages

One of the first things that people think of after an auto accident is how they can recover for their damaged vehicle. An automobile accident may result in you being able to recover for property damages and loss of use damages. It is clear that if somebody crashes into you and damages your car, you are entitled to have the at fault driver pay for your vehicle's repairs or if your auto is a total loss, to pay enough for you to be able to buy a replacement car. Property damage claims can be made not only for damages to your car, but also for the value of the contents inside your car.

A total loss claim is applicable when your vehicle is so damaged that repair is not practical. Florida statute 626.9743 gives insurance companies a broad range of ways to determine what your damaged car is worth. First, the insurance company can give you the cash value of the car through one of several ways, including looking at:

- The cost of two or more comparable motor vehicles in the local market area
- The cost of comparable vehicles in the area
- Electronic database providers available to the insurer

- Using a guidebook available to the public like NADA, Edmunds, or Kelly Blue Book
- A quote from two or more licensed dealers in the area

These evaluations take into account certain aspects of the car such as: original price, amount of mileage on the odometer, and age of the vehicle. We are successful at having the evaluations be determined in a way that best suits our client, so they can get the maximum value to which they are entitled, to compensate them for their total loss.

The second way your insurance company can compensate you for a totaled vehicle is through a comparable replacement vehicle. The insurance company must provide a comparable car made by the same manufacturer, for the same or newer year, with a similar body type, similar mileage and options as your totaled vehicle. An insurance company's vehicle assessment is conducted by their own claims adjuster, and is usually done in the insurance company's favor. We are successful at finding flaws in the ways insurance companies evaluate their assessed replacement value, and we make sure your property damage or total loss settlement is a fair one.

Repairable property is when your vehicle is damaged, but not totaled. You can recover the reasonable cost of repairs. If the cost of repairing your vehicle is less than totaling it, the insurance company will fix it instead of providing a new one. We will protect your best interest, by making sure the evaluation of your damaged vehicle is done in your favor. We will make sure the insurance company is fixing your vehicle to the same condition it was in immediately prior to the accident, and is doing so in a reasonable time.

It is in your best interest to be familiar with your auto insurance policy before an accident ever occurs. In the result of your car being totaled, make sure you know how your provider determines the total loss of your vehicle, that way you can ensure they are giving you a fair price for it. If your vehicle is damaged but can be repaired, save any estimates or bills if you decide to fix your vehicle. Also, keep track of any add-ons you have put on the car, so that you can factor them into the value of a repairable or totaled vehicle.



Since the inception of its practice in January of 1994, the Law Offices of Martin Schwartz has successfully handled property claims, total loss claims, and lost wage claims absolutely free for any client who has retained our firm for his or her bodily injury claim. If you allow our office to represent you on your auto accident case, we shall fight for you to obtain the full damages you deserve on your property

damage, loss or use claim, loss of wages claim (if applicable), bodily injury claim, and uninsured motorist claim (if applicable). Just because a law firm takes on your bodily injury claim, does not mean they will handle your property damage for free. Our offices have always, and will continue to provide property damage representation to you for free when we take on your bodily injury claim.

### Loss of Use

Whether your vehicle is repairable or a total loss, and you need time to get a replacement vehicle, you may be entitled to loss of use damages. One can assert that loss of use damages cover the loss of use of your vehicle from the day of the accident, until you have repaired your damaged vehicle, or bought a replacement vehicle. One incurs loss of use damage when he or she must borrow a car from someone, or obtain a rental car. Generally, loss of use damages are calculated based on what a rental car would cost multiplied by the number days needed to get your car repaired or in cases of total loss, the amount of time it takes to obtain a replacement vehicle.

The vehicle value is usually determined by people familiar with the item, such as car salesmen who deal in your particular type of car. Typically, loss of use can be measured by the cost of a comparable rental car.

At the Law Offices of Martin Schwartz, we know the major inconvenience of not having a vehicle to get around can be. We make sure that you not only get compensation for the loss of use of your vehicle, but that you get a temporary replacement quickly and with as little worry as possible. We want to make sure that all your legal needs are handled so you have more time to get medical treatment and focus on your full recovery, with as little burden on you as possible.

### Medical Expense Recovery

Besides damages suffered to your vehicle, many auto accidents are plagued with injuries to the parties involved. You can recover your medical expenses through both your own PIP coverage, but also through the at fault party. Often, the compensation received from your own no fault insurance is not enough to fully cover your medical expenses. After determining the insurance coverage under your policy, you may need to recover the additional costs you are entitled to from the at fault party. However, be aware that in order to recover from the at fault party, you need to meet the burdensome threshold of permanence and significance, described in the next section. There are two types of medical expenses you can recover: past and future medical expenses. Past medical expenses include any expense you have already made toward your injury. Past expenses include, but are not limited to:

- emergency room visits
- doctor visits
- surgery

- filled prescriptions

Future medical expenses are any expenses that are reasonably foreseeable to be needed in the future. Future medical expenses are for medical treatments that your medical doctors anticipate you shall need in the future.

Typically, medical expenses are one of the larger parts of the recovery process. To make this portion of the process as stress-free as possible, there are several things you should do. Advanced planning is key. Make yourself familiar with reputable doctors in the area, if you cannot find one, our office will help you find a doctor you can trust. Get to know your health and insurance coverage, even on a basic level. Our office will go over your insurance policy with you, to make sure that it is properly providing you with the medical coverage you should be getting. If you are unfortunate enough to get in an accident, the first thing you should do is get medical attention as soon as possible. Florida's no fault law gives you a 14 day deadline to obtain medical treatment in order to preserve your no fault medical benefits. Additionally, the sooner you get medical attention, the more ready you can make your case. Lastly, make sure that you save all medical documentation. This will help during the negotiation process and if necessary, during discovery. The opposing party may suggest that this was a pre-existing injury. Be prepared to prove otherwise.

The Law Offices of Martin Schwartz are aware of the importance of making yourself whole again after an auto accident. Our free consultation will help make sure that your medical expenses are recovered to their greatest capacity. We understand the hardship of dealing with high hospital bills and medical expenses. Our office will not just treat you like another file. We will sit down with you and review your medical bills to make sure you have a doctor who is the right fit, as they all charge different prices, and some may even be charging excessive amounts. We are prepared to serve your best interest, whether that means settling your case out of court, or taking the case to trial.

### Permanent Injury Threshold

Too often, people believe that if they are injured in an auto accident, they are automatically entitled to full compensation. It is not so simple. Under Florida law; you have an obligation to mitigate your damages by going through your no fault benefits to pay whatever medical expenses and loss wages that shall be covered by your own auto insurance policy. In terms of damages not covered by your no fault insurance policy, you have to demonstrate you have suffered a **permanent** injury. Those assumptions in many instances are wrong.

Florida Statute 627.737 created a threshold to determine if an individual would be able to claim injury damages from the at-fault party. The threshold relies on two keywords: "significant and permanent." In order to recover medical expenses, an individual must prove that they have suffered from one of the following:

- significant and permanent loss of body function
- permanent injury within a reasonable degree of medical probability
- significant and permanent disfigurement –or–
- death

If you cannot establish your injuries to be permanent and significant, you may not meet the threshold for making a claim against the at fault party. What this means to you, the injured party, is that you have a burden to prove that your injuries have a lasting effect on your wellbeing and health. If an individual believes that his or her injuries meet the threshold, it is up to them to provide evidence of the significant and permanent injury they suffered. A medical doctor will be able to review your injuries, and determine the permanency of them.

Our office is willing to work on cases, whether big or small, to help you maximize the value of your claims under Florida law. We will do what it takes even if we have to go to the client’s appointments with them.

### Lost Wages

“Lost wages” are another way for you to recover from the damages from the result of your auto accident. Lost wages are the amounts of money you normally earn but could not earn on account of having to miss work while trying to recover from an accident. Your no fault insurance most likely will cover 60% of your lost wages, unless it was waived from your policy. You can recover the other 40% of your lost wages from the at-fault party. An individual is allowed to recover both past and future lost wages. Types of wages you can recover include: hourly wages or salary, bonuses, tips, overtime, pension and self-employment earnings.

In order to prove lost wages, you should be able to back it up with payroll records, and medical documentation. You should have some recent payroll record or pay stubs, and if not, you should ask your employer. Your doctor may have to provide testimony to show that the injury was a result of the accident, that it would inhibit your work, and that the time away from work is reasonable to the recovery.

Our office handles lost wage claims with your PIP coverage carrier as part of our service to our auto accident clients, without charging any extra fee.

### Loss of Consortium

An accident can have a toll on an entire family. Florida’s loss of Consortium law allows for an adversely affected spouse to be made whole from the result of their spouses’ accident. Things covered under loss of consortium include a depreciation of:

- Services

- Comfort
- Society
- Attention

Typically, loss of consortium claims stem from a change in how the relationship functioned before, compared to after the accident. A typical example of loss of consortium is when a spouse has to stay home from work to take care of their injured husband or wife.

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