White Paper: Auto Injury 101

What is PIP Insurance and who is covered?

All Florida drivers are required to carry no-fault auto insurance, also known as Personal-Injury Protection (or PIP), except for bus drivers, taxis and motorcycles. This pays 80% of certain medical and 60% lost-wage benefits (and all reasonable household expenses in connection with the injury, after the deductible) up to $10,000.

An injured person must report any accident to their own insurance carrier and utilize their own PIP benefits first (regardless if they were driving, not driving, at fault, not-at-fault, in their own car, in a stranger's car).

If the injured person does not own a car, your personal injury lawyer will look for any auto insurance that may cover resident relatives in the injured-person's household.

If the insured person does not own a car, and does not live with anyone who owns a car, your personal-injury attorney will apply with the insurance carrier that covers the car in which he/she was in when the accident occurred.

BUT - If the injured person owns a car, but does not have the required PIP insurance, they will not be entitled to utilize anyone else's PIP insurance and the at-fault party will not have to pay for medical and lost wage-benefits that the injured party would have been entitled to if they were abiding by the PIP law (up to $10,000).

Permanent Injury Threshold

If an injury is not permanent, the claimant can only recover the 40% of lost income and 20% of medical bills not paid by the PIP insurance (and any medical bills exceeding the available PIP limits); full value for any future medical bills and future loss of earnings capacity.

But, in order to obtain non-economic damages (i.e. pain and suffering, mental anguish) the accident must result in significant and permanent loss of an important bodily function, significant scarring / disfigurement, or other permanent injury within a high degree of medical probability.

Emergency Medical Condition

In 2013 the legislature enacted additional limitations to obtaining PIP insurance coverage:

1. You must get treatment within 14 days of the auto accident or PIP benefits will not be available to you.

2. Assuming you are examined by a medical doctor (MD), doctor of osteopathic medicine (DO), physician's assistant (PA) or an advanced registered nurse practitioner (ARNP) within 14 days, if that medical professional does not believe you have an "emergency medical condition," PIP benefits will be limited to $2,500 as opposed to the full $10,000.
3. PIP no longer covers massage and acupuncture.

What Happens After I Exhaust my PIP Benefits?

Remember that Personal-Injury Protection (PIP) is a no-fault benefit. It doesn't matter if you caused the accident or if was the result of the negligence of another – if you drive, and follow the law by carrying auto insurance (or otherwise qualify), you are entitled to the PIP benefits described above.

But no matter how you slice it, $10,000 is not substantial sum of money when dealing with most car accidents. After the $10,000 is exhausted, if you have additional medical bills and additional lost wages – and/or sustained a permanent injury qualifying you to receive money to compensate you for pain and suffering – an auto-negligence claim or action will need be brought. This is where you seek money for medical bills, lost wages, and pain & suffering from the person who negligently caused your injuries.

1. **If the car accident was your fault**: you may not bring an auto-negligence claim. If you sustained injuries you will need to use your health insurance.
2. **If the car accident was not your fault, but the at-fault party did not carry insurance**, or carried insufficient insurance, you will need to look to your own uninsured-motorist coverage. A more detailed discussion of uninsured motorists (UM) coverage can be found elsewhere on neufeldlawfirm.com.

Basis for Auto Negligence Actions

All drivers have an obligation to drive their vehicle in reasonable manner to allow them to avoid endangering others (this includes other drivers, pedestrians, even their own passengers). Every driver must have control of their vehicle at all times – but surrounding circumstances will be taken in to consideration (traffic / weather conditions, width of the road, angle of curves and corners in the road are taken into consideration), For example, it may be reasonable to travel at a certain speed during a clear, sunny day. That same rate of speed may be unreasonable during a rainy or high-traffic situation.

The concept of negligence is simply: what would a reasonable person do in a similar situation.

Comparative Negligence

Florida is a comparative negligence state. This means that the injured party will be responsible for that portion of the accident determined to be his or her fault. As a simple example, if a jury decides that a plaintiff is 20% at fault in an accident and awards $100,000.00 in a damages verdict – the plaintiff will only be awarded $80,000.00.

What if the Owner of the Negligent Vehicle is not the Driver of the Negligent Vehicle?

In short, they're both liable – even if the owner of the car wasn't even in the vehicle at the time of the car accident. This is referred to as the **Dangerous Instrumentality Doctrine** – and it applies as long as the owner consented (this can be implied) to the driver getting behind the wheel. The dangerous instrumentality doctrine also creates liability on an employer if their employee negligently causes an auto accident in a vehicle owned by that employer, if the employee was acting within the scope of his/her employment (this is sometimes referred to as vicarious liability).

Of course, some exceptions to the Dangerous Instrumentality Doctrine apply:

1. **Lessor Exception**: The owner is not responsible for the actions of someone who leased or rented their vehicle as long as the lessee maintains at least $100,000/$300,000 in bodily injury insurance. However if that policy lapses, the lessor may be held responsible under this doctrine. This is set forth in Fla. Stat. 324.021(9)(b)(1) and *Rosado v. Daimler Chrysler Fin. Servs.*, 112 So. 3d 1165 (Fla. 2013).
2. **Theft Exception**: if your car is stolen (obviously there was no consent) and the thief gets into an accident, the owner will not be held responsible.
3. **Body Shop/Mechanic Exception**: if you drop your car off at a body-shop and one of their employees gets into an accident while driving your car, you won't be held liable.
4. **Independent Contractors**: Employers are not liable for the actions of their independent contractors.

If one would expect children to be near, such as in a residential neighborhood, they must remain extra vigilant because children do not always act in a predictable manner (discussed in *Miami Paper Co. v. Johnston*, 58 So. 2d 869 (Fla. 1952)). However, the law also makes it clear that drivers are not held to an impossible standard – if a child suddenly darts out into the road from a sidewalk into the path of a vehicle, that vehicle's driver may not be held responsible (this is further described in *Bell v. A.A. Holiday Rent-A-Car*, 304 So. 2d 535 (Fla. 3d DCA 1974)).

Drivers have a duty to maintain a safe following distance from the car in front of them. The Florida Supreme Court case of: *Clampitt v. DJ Spencer Sales*, 786 So. 2d 570 (Fla. 2001) sets forth the presumption that, in a rear-end accident; the car in back is negligent. This presumption is rebuttable – meaning, there are defenses where the rear-end auto accident could be considered partially or entirely the fault of the car in front.

What Evidence Could be Used to Rebut the Presumption that Rear-End Car Accidents are the Fault of the Driver in Back?

1. **Sudden Stop**: This is the defense most commonly used. If the rear vehicle could not have reasonably anticipated that the front vehicle was about to suddenly stop, the rear vehicle will not be deemed negligent in causing the accident. *Sorel v. Koonce*, 53 So. 3d 1225 (Fla. 1st DCA 2011).

The sudden stop defense only works if the front vehicle stopped in an haphazard or careless manner. However if the front driver stopped because he/she ran into another road hazard would not work to rebut the classic rear-end negligence presumption when the sudden stop is an appropriate or anticipated response. *Eppler v. Tarmac,* 752 So. 2d 592 (Fla. 2000).

2. **Mechanical Failure**: If unanticipated – it might turn the auto-negligence case into a products-liability case against the manufacturer of the defective part that caused the car accident. In other words, the injured party might have to sue the manufacturer rather than the driver of the car that rear ended him/her.
3. **Inappropriate Lane Change**: If the lane change was sudden and unexpected it can be used as evidence of negligence against the front driver. *Dept of Highway Safety v. Saleme*, 963 So. 2d 969 (Fla. 3d DCA 2007).
4. **Unforeseeable Loss of Consciousness**: surprisingly, this is a complete defense to a claim of auto negligence. But the key here is the loss of consciousness (LOC) must truly be unforeseeable (if the driver has any inkling that he/she is about to have a heart attack, stroke, seizure – they must immediately get off the road. If the person asserting the LOC defense has a history of LOC, then the defense will not stand.

There are other defenses available as well that can be argued to reduce the amount of damages owed to a plaintiff. For example, if it can be shown that the plaintiff was not wearing a seatbelt, that will be evidence of their own comparative negligence (only newspaper deliver persons, garbage men/women, those in the living area of an RV, school or commercial bus passengers, motorcycle riders, folks on farm equipment, or someone who has previously been ordered by a doctor that wearing a seatbelt is dangerous are allowed to drive on the road without seatbelts and not be in violation of the Florida Safety Belt Law.

Most traffic laws (speed limits, stop signs, traffic signals) are created for safety reasons and failing to abide by these safety-related laws will be used as evidence against the violator. The Florida Supreme Court in *Seaboard Coastline v. Addison*, 502 So. 2d 1241 (Fla. 1987) states that a jury should be instructed that violation(s) of traffic laws or ordinances is evidence of negligence.

<u>Damages</u>

Car accident victims are entitled to compensation for the following types of damages:

1. Past and future medical bills

2. Past and future related expenses (e.g. having to hire a home-health aid)
3. Past and future loss of earnings
4. Future loss of earning capacity
5. Property damage (e.g. damage to your car, property, iPhone, etc...)
6. Spouse's loss of consortium
7. Pain and suffering
8. Mental anguish
9. Loss of ability to enjoy life
10. Disability and Disfigurement

Punitive damages are available when the negligent party can be shown to have acted with reckless disregard for others on the road (e.g. driving while intoxicated). However, an award of punitive damages will not be paid for by the applicable insurance policy in excess of the policy limits.

NK&P

small firm, BIG RESULTS

The Personal Injury Law Firm of Neufeld, Kleinberg & Pinkiert, PA is here to help you though your car accident – big or small. Reach us 24/7 at (305) 931-6666 | (954) 523-8292 | (800) 379-TEAM or find us at www.neufeldlawfirm.com.