

**The Ultimate Guide To  
Accident Cases in Florida**

**WINSTON LAW SERIES**

# **FIVE DEADLY SINS**

**THAT CAN WRECK YOUR INJURY CLAIM**

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**THAT CAN WRECK YOUR INJURY CLAIM**

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**Bradley Winston, Esq.**

WORD ASSOCIATION PUBLISHERS

[www.wordassociation.com](http://www.wordassociation.com)

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## FEWER CASES — MORE TIME FOR YOU

We are “different.”

We don't rely on a high volume of cases generated by massive TV and Yellow Page advertising. We don't claim to handle every type of law under the sun. We don't want to. We don't *need* to.

Each year we accept a limited number of injury, accident, and disability cases from the hundreds of people who ask us to represent them. We are not a “TV advertising personal injury mill.” We do not allow paralegals and assistants to negotiate your case with the insurance company. Fewer cases means more time for you and, we believe, better results overall.

Since 1988, Brad Winston has represented accident, injury, and insurance claimants throughout Florida. Most of our cases are referred to us by former satisfied clients and by other attorneys and health care professionals. If we accept your case and you are not local to us, we will come to you, anywhere in Florida.

Sometimes the best advice you can get when you are thinking about a lawsuit is that you do not have a claim that can be won. If that is true, we will tell you. We'll also tell when we think you are



better off handling a claim yourself—without an attorney. But if your case passes our test and we accept it, you can be assured that you will receive personal attention. We will represent you aggressively, keep you up to date on what is happening in your case, and give you advice as to whether you should settle your case or go to trial.

We will explain all fees and costs to you fully before we start working on your case. Together, as a team, we will decide on the best tactics for your case.

Brad Winston,  
Fort Lauderdale, Florida

## FOREWORD

# Why This Book?

I wrote this book because, if you are like most people, this is the first time you have been in an accident. You have questions. You are getting calls from insurance company representatives who want to ask “just a few questions.” The insurance company may be pestering you to sign their forms “so we can get the records and handle this for you.” They may even have already offered you money to settle your claim.

You started your search for an attorney but found that most attorney advertising doesn't give you any useful information at all about *how to find the right lawyer* for your case. All of the ads say “Hire me! I don't charge a fee unless we get you money,” but then you realize that *all* personal injury lawyers say that. You soon realized that ads that showed fistfuls of cash, gory accident scenes, or platitudes such as “We Care For You” or “We Are Aggressive” are 100 percent meaningless. (Don't you *expect* that your attorney will care for you?)

Here are some other meaningless headlines you might see in the Yellow Pages.

(Ask yourself: Does this headline help me figure out if this is the right lawyer for me?)

- Serious Injuries, Serious Results
- “Why Me?”
- Can You Get a Lawyer Who Cares?
- All Accidents and Serious Injuries
- Accidents and Injuries [Wow—*That’s* original!]
- We’re the Law Firm that Cares About You
- Legal Help for the Seriously Injured

I won’t even mention the ads that have, as a headline, the firm name! How useful is that?

I wrote this book for *you* so that you could receive learn good information in the quiet of your own home *before* you hire a lawyer and *before* you talk to an insurance adjuster. (Hopefully you haven’t signed forms yet!) You may not even need a lawyer to settle your claim.

**FIVE DEADLY**

**SINS**

**THAT CAN WRECK YOUR INJURY CLAIM**



## CHAPTER 1

# **Myths You Might Have Heard from Friends, Neighbors, or Relatives**

- If you write the insurance company a letter and are reasonable, you will get a reasonable settlement proposal.
- When you are in an accident and the insurance company calls you to ask for a recorded statement, you have to give them a recorded statement or they won't settle with you.
- All lawyers who advertise that they handle accident cases have the same ability, tools, and experience to handle your case.
- The insurance company for the person who hit you is obligated to pay your medical bills as they come due.
- All lawyers charge the same fees in injury cases.
- The court system is some sort of lottery that will help you get rich.

- Just because there has been an accident and it wasn't your fault, there must be some insurance company that will pay for your bills, lost wages, and injuries.
- If a lawyer refers you to a doctor, that is a good idea.
- Juries in Florida are generous.
- There is a formula for determining settlement value.

## CHAPTER 2

# **Tricky Insurance Companies, Meaningless Lawyer Advertising, and Frivolous Lawsuits**

I am sick and tired of insurance companies taking advantage of people before they have had a chance to talk to an attorney. For years, one major insurance company encouraged claimants to not even talk to an attorney before settling a claim. They used fear (the lawyer will take one-third of this check we're about to pay you just for talking to them) to dissuade people from getting good advice.

Guess what? You may not need an attorney to represent you in your case! No one, however, should settle a case without understanding "the system." Typically, for example, the insurance adjuster isn't going to tell you that you *might* have to turn around and take the check the insurance company just paid you and pay it to your health insurance company. They don't care about you.

That adjuster just wants to close the file and get you to release all of your claims.



Here are some other tactics I've seen insurance companies use just to wear you out and get you to go away:

1. **Deliberate Delay.** They know that often you are in a financial squeeze. Even if you have good health insurance, the fact that you aren't working may make it difficult to pay co-pays and deductibles. The insurance company knows you are getting dunned by doctors, so they take their time with your claim.
2. **Requesting Unnecessary Information.** Insurance companies will insist that you track down every little piece of information before "we can evaluate the claim." Even if the information they are now asking for would not add a penny to their offer, they are happy to wait another six weeks for you to track it down. Meanwhile, they are earning interest on the money they are *not* paying you.
3. **Disputing Medical Treatment.** Even though I've never met an adjuster who went to medical school, adjusters seem to know just what treatment is right for you! Usually, they "know" that you were over-treated because "our computers say you should have been better by now."
4. **Nickel and Dime the Medical Charges.** Think about it. If they shave just 5 percent off your claim and do that to the millions of claims made each year, they get richer.
5. **Misrepresenting Insurance Benefits.** This is a big one. They tell you that there's only \$100,000 in coverage. We file suit and "magically" find an umbrella policy! Don't you

think they knew that just by looking on their computers before we filed suit? Of course they did.

## **6. Acting Like Your Friend and Making False Promises.**

Watch out for the adjuster who befriends you, shows up at your house, and promises to pay your future medical bills. This is a tactic to stop you from hiring a lawyer. (Believe me, they won't come around to your house once you have a lawyer.) Those future medical bills? Well, they'll pay them until their computer says "Too much! Too much! This claim is costing us too much."

I wrote this book so that you can be empowered.

I am also sick and tired of outrageous lawyer advertising in which lawyers with a reputation for handling hundreds of cases at a time make promises that can't be kept or equate your injury to "cash, cash, cash." Did you notice that almost all of the attorney ads in the Yellow Pages claim personal injury expertise? There are lawyers who *never* go to court, settling each case for pennies on the dollar. The insurance companies know who they are, *and so should you.*

Frankly, I am also tired of lawyers who file frivolous lawsuits, because frivolous lawsuits hurt everyone by delaying real claims from getting to court. If you are looking for a lottery win, look elsewhere. If you are looking to never have to work again because someone tapped you from behind at a red light, look elsewhere. My firm handles legitimate claims for legitimate claimants. No "quick cash for your pain" here. Sorry.

## CHAPTER 3

# What You Should Expect From Any Lawyer Before You Make an Appointment for that “Free Consultation”

Before you make appointments with lawyers, you should ask them to send you their package of written information that should include at least the following:

1. A sample fee agreement.
2. A listing of sample verdicts, settlements, and testimonials from former clients.
3. A full written explanation of the steps involved in a personal injury lawsuit.
4. A *written* assurance that they carry errors and omissions (“malpractice”) insurance in the amount of at least \$1 million. (You’d probably be surprised to see how many lawyers carry *no* insurance.)

5. A full explanation of fees and costs, the difference between the two, and how the percentage fee is calculated.
6. Professional biographies that outline at least how long they have been actually going to trial in personal injury cases and indicates whether they are board certified or not. (Like doctors, there is no requirement that an attorney be board certified to handle your case. Anyone can advertise for any type of case.)

**Please Note:** Our policy is to not take your case if you are already represented! If you are already represented by an attorney, this book may raise questions for you. Ask your current attorney these questions. Everyone does things a little differently, and we do not accept cases in which another local attorney has already been involved. If you are currently represented, use this book to increase your knowledge and to ask questions, but please don't ask us to take on your case. We won't.

### **This book is not legal advice!**

The Florida Bar requires that I inform you that what is in this book is not legal advice. I'm not your lawyer until you and I enter a written agreement for me to be your lawyer. I know the arguments the insurance company will make—and so should you—even before you file your claim. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice about your case, as each case is different, and an attorney can give you quality legal advice only when he or she understands the facts involved in your specific case.

## CHAPTER 4

# What Is a Personal Injury Case?

Just what is a personal injury case? Lawyers say that they do “personal injury cases” or “accident cases” or “wrongful death cases,” and yet my best friend tells me that he does not think that everyone understands exactly what this means. Indeed, people who have known me for years will ask me for a referral to a car accident attorney! They do this even though I think they know exactly what it is I do.

A personal injury, car accident, or wrongful death case is any type of claim in which a person has been injured or killed due to someone else’s carelessness. If the only damage in your case is that your car got banged up, then you don’t have a personal injury case—but you may have a property damage case. We do not handle property damage cases, but there are many lawyers who do. If you and your car have both suffered an injury, then you have a personal injury as well as a property damage claim. In those circumstances, either your insurance company or the other party’s insurance company will usually take care of the property damage claim.

If someone's negligence causes the death of another, then this is called a "wrongful death" claim. The law of each state or jurisdiction differs significantly regarding what can be recovered in a wrongful death case. You need an attorney who understands the specialized wrongful death laws of Florida.

## CHAPTER 5

# You Are at War — But It's a War That Can Be Won

You entered a war zone the day you were injured. Insurance companies and some in the government have declared war on injured people and their attorneys. They have waged the war in the media, and their propaganda has had a tremendous effect on juries and their verdicts. This is called *tort reform*. The success that the insurance companies have had in tainting the minds of jurors has emboldened them to not offer fair settlements until you prove to them that you are ready, willing, and able to go to trial.

Admit it. Until you or a family member was injured, you too may have thought that a personal injury lawyer is a bad person and that people who make claims and file lawsuits are stealing from society. That's what billions of dollars in insurance company advertising will get you!

## CHAPTER 6

# What Must You Prove to Win Your Case?

Just because you were hurt doesn't mean you are entitled to money. You must prove that someone else was negligent or careless and that it was that person's negligence or carelessness that caused your injury. If you fail to do this, you lose. If you sue the wrong person, you lose. If you wait too long to sue, you lose. If you had an injury *before* the accident, then you are entitled to be compensated only to the extent your injury is now worse.

In Florida, if you were in any way at fault, your percentage of fault is deducted from the jury award—you lose that. This is known as the law of comparative negligence. This means that if the “other guy” was 50 percent at fault and you were 50 percent at fault, then you can recover only half of your damages. In certain instances, such as where you were intoxicated when injured and contributed to causing more than 50 percent of the comparative fault, you can't recover anything at all. In other instances, other people than the defendant can have percentages of fault attributed to



them, and you will not collect that percentage of your damages from the defendant either.

Before we accept your case, we must be able to understand clearly what the roles of everyone involved are and who may be apportioned fault, including yourself.

## CHAPTER 7

# **Do You Really Need an Attorney to Settle Your Case?**

You definitely do not need an attorney for every small injury case. In fact, our office does not accept cases in which there's little or no property damage or the injuries are minor. Why not? Simple. In the small case, the attorney fees and costs might leave little or nothing for you after your medical bills are paid, and we don't believe that would be fair to you. If your case is small and you would like to try to handle the case yourself with our advice, our small consulting fee may save you thousands!

## CHAPTER 8

# Finding a Qualified Personal Injury Attorney

Choosing an attorney to represent you is an important but daunting task. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads—all of which say basically the same thing. You should not hire based solely on advertising—anyone can buy a slick commercial, and many have.

How do you find out who in your local community is the best for your case? There are certain questions to ask that will lead you to the best person for your case no matter what type of claim you have. Yes, it will involve some time on your part, but that's okay, because the decision you are making may be critical to the success of your case.

The world of personal injury claims is much too specialized for someone who does not handle these cases regularly. Too many times we have looked at cases that have been handled by general practitioners, tax lawyers, criminal lawyers, and family

law lawyers. That's just no good. Get a specialist. They are out there. (Clue: Does the Yellow Pages ad list twenty-seven different "specialties?" Question to ask: How can that be?)

You should be aware that the insurance companies who defend personal injury and accident cases know the attorneys in your area who actually go into court to try cases and those who do not. The insurance companies use that information to help evaluate their risk. One of the first questions some insurance adjusters will ask when a serious claim comes in is: who is representing the plaintiff? I've heard insurance defense lawyers laugh as they head for trial against one of these non-personal injury attorneys! It's like shooting fish in a barrel for them.

If this information is important to the insurance company, shouldn't it be important to you?

## **So how do you find out who is good in your area?**

Here Are Some Tips:

1. Get our book, *The Truth about Lawyer Advertising* ([lawyeradvertisingtruths.com](http://lawyeradvertisingtruths.com)). It will teach you how to "read" the ads. I have also written *Making the Right Choice: A Practical Guide for Choosing an Attorney* ([www.rightlawyerguide.com](http://www.rightlawyerguide.com)).
2. Get a referral from an attorney you know. He or she will probably know someone who specializes in your area of need. If you need an attorney in an area of practice that we

don't do, call us. We'll help you find the right lawyer for your case.

3. The Yellow Pages can actually be a good source of names. Understand three things, however: First, not everyone advertises in the Yellow Pages. Most of our cases come from referrals from other attorneys or from satisfied clients. Second, be careful about the ads that tout too many different specialties. No one can do everything well. Third, be careful about full-page ads. This advertising may attract a lot of frivolous cases that can overwhelm an attorney. Make sure that the attorney you hire is selective enough with his or her cases that your important case does not become just one more file in the pile. We know several law firms that went out of business buried under the "weight" of huge Yellow Pages ads.
4. Your local bar association probably has a lawyer referral service. Understand that lawyers have signed up and may have paid a fee to be listed in certain specialties. Their names come up on a rotating basis. This is another good source for an initial appointment. Just take the questions we talk about here to that interview. Call and ask for the written information I mentioned above.
5. Interview several attorneys. Ask each attorney who else handles these cases in your area. If he or she won't give you any names, leave. Ask this question of each attorney. The names you see showing up on various lists of recommendations are probably good bets for attorneys doing these cases in your area on a regular basis.

6. Be careful about any attorney who rushes you to sign a contingency fee agreement. A contingency fee is not the right fee for every type of personal injury case. You should take the agreement home, read it, and understand it. We have heard of instances in which fee agreements are delivered by courier within hours of the time you first call the attorney's office—that's right—before you even have had a chance to meet with the attorney. This is outrageous.
7. Run from any attorney who calls you first.
8. Beware of "runners." A "runner" hangs out at police stations or listens to police radio to "run" to accident scenes or hospital rooms to encourage victims to sign contracts with attorneys. *Outrageous* does not begin to describe this practice!
9. Beware of any attorney who contacts you in writing just after you have had an accident for the sole purpose of soliciting your claim. If you are contacted "cold," it should be for the sole purpose of providing you free information that you can study in your own home, on your own time, not soliciting your case.
10. Beware of any attorney who has a stable of doctors he wants to refer you to. You can tell who these attorneys are by the rack of doctors' cards they keep in their office. Local judges have said that when an attorney makes a referral of a client to a doctor for a garden-variety case, this is the "kiss of death" for that case. It's okay to get a

referral to a specialist health care provider, but *run* from any attorney who has a stack of doctor or chiropractor cards within reach.

11. Here are factors and good points to look for and question your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.

- **Experience.** Obviously, the longer an attorney has been practicing in a particular area of the law, the more you will know. Experience can be a big factor in many cases.
- **Experience actually trying cases.** Ask the attorney how many cases he or she has actually tried. Has he or she achieved any significant verdicts or settlements? How about a list of verdicts and settlements that you can look at? Don't accept the "All my cases are confidential" line! The greater your number of cases actually tried and substantial verdicts and settlements achieved, the more likely the insurance companies will respect you. Past results are not a guarantee of the future, but past results do demonstrate some level of experience and success.
- **Respect in the legal community.** Is the attorney AV Rated by Martindale-Hubbell? This is the "peer review" service recognized nationwide in which lawyers and judges rate each other in the areas of legal ability and

ethics. “A” is the highest rating in legal ability, and “V” is the highest rating in ethics.

- **Board certification.** The Florida Bar tests and certifies lawyers. It requires a minimum number of trials and recommendations from judges and opposing attorneys in civil trial specialty, among other specialties. Read more about the Florida Bar Board Civil Trial Board Certification and the American Board of Trial Advocates in *The Truth About Lawyer Advertising* book.
  - **Recognition by Super Lawyers®.** This is a list of lawyers who have attained high peer recognition, meet ethical standards, and have demonstrated achievement in their field.
  - **Membership in trial lawyer associations.** In our area, you can certainly find a lawyer who is a member of the Florida Justice Association (FJA) and the American Association for Justice (AAJ). These organizations provide extensive education and networking for trial lawyers.
  - **Publications.** Has your attorney written anything that has been accepted for publication in legal journals? This is another sign of respect that the legal community has for his or her skills and experience.
12. Ask your attorney if he or she is licensed in the state where your case will be filed. We believe that an attorney who is not licensed in the state where the case will be filed is



at a disadvantage when it comes to negotiating with the insurance company. The insurance companies know who is not licensed and thus cannot actually try the case.

We recently ran across a horror story involving an out-of-state attorney who evaluated a Florida medical malpractice case. This attorney kept the file for two years and gave it back to the client on the day the statute of limitations was expiring in Florida. The problem was that the attorney told the client that he had one more year to file his case, but this was based on the statute of limitations in his own state. The client was then unable to file his case in Florida. Dealing with a lawyer who is not licensed in Florida can be another “kiss of death” for your claim.

### **Once You Have Decided on an Attorney, Make Sure You Both Understand Your Goals and You Understand How the Relationship Between You and Your Attorney Will Work.**

How will your attorney keep you informed about the progress of your case? Many attorneys send a copy of every piece of correspondence and pleadings in the case to the client. Your attorney should also take time to explain the “pace” of the case and in what time frames the client can expect activity to take place.

Find out who will actually be working on your case. Make sure that you and your attorney have a firm understanding as to who will be handling your case. A lot of things go on with a case that do not require a senior attorney’s attention. On the other hand, if you are hiring an attorney because of his or her trial skills, make sure that that person is going to be trying your case for you.

## **What Does an Experienced Personal Injury Attorney Do for You in a Case?**

Here is a list of the tasks your attorney may be called upon to do in your case. Remember that each case is different and that not all of these tasks will be required in every case. They are:

- Conduct initial interview with client.
- Educate client about personal injury claims.
- Gather documentary evidence, including police accident reports, medical records, and bills.
- Analyze the client's insurance policy to see whether there are any coverages that the client has that may pay all or a portion of the medical bills while the claim is pending.
- Analyze the client's insurance coverages and make suggestions as to what coverages should be purchased for future protection.
- Interview known witnesses.

- Collect other evidence, such as photographs of the accident scene.
- Analyze the legal issues, such as comparative negligence and non-party fault or immunities.
- Talk to the client's physicians or obtain written reports from them to understand the client's condition fully.
- Analyze the client's health insurance policy or welfare benefit plan to ascertain whether any money it spent to pay the client's bills must be repaid.
- Analyze the validity of any liens on the case. Doctors, insurance companies, welfare benefit plans, and employers may assert that they are entitled to all or part of client's recovery.
- Contact the insurance company to put them on notice of the claim if this has not already been done.
- Decide with client whether an attempt will be made to negotiate the case with the insurance company or whether suit shall be filed.
- If suit is filed, prepare client, witnesses, and health care providers for depositions.
- Prepare written questions and answers and take depositions of the defendant and other witnesses.
- Produce to the defendant all the pertinent data for the claim, such as medical bills, medical records, and tax returns.

- Go to court to set a trial date.
- Prepare for trial and/or settlement before trial.
- Prepare client and witnesses for trial.
- Organize the preparation of medical exhibits for trial.
- Organize the preparation of demonstrative exhibits for trial.
- Prepare for mediation and/or arbitration.
- File briefs and motions with the court to eliminate surprises at trial.
- Take the case to trial with a jury or judge.
- Analyze the jury's verdict to determine if either side has good grounds to appeal the case.
- Make recommendations to client about appealing the case.

## **Beware of the ERISA Lien “Monster”**

You should be aware that often, if your medical bills were paid by health insurance or an employer’s health plan, the health insurance company or plan may want you to reimburse it out of any personal injury recovery. Your “insurance” turns out to be not insurance but a “loan.” The laws in some states, including Florida, generally prohibit such claims by insurance companies, but they make the claims anyway. We have seen cases in which the insurance companies hired lawyers to make the claims for them. What they don’t tell you is that this area of law, known as “reimbursement” or “subrogation,” is actually quite complicated and is sometimes governed by a federal law called ERISA (The Employee Retirement Income Security Act of 1974). Your attorney must understand the implications of ERISA for your case.

There are other liens that may affect your total recovery in the case. If your bills were paid by Medicare, Medicaid, or the U.S. government (including “free” military care), you may be forced to pay back a portion of your settlement.

## **Eleven Questions to Ask the Insurance Company**

1. Will you put in writing that the accident was not my fault?
2. Will you tell me how much insurance the person who hit me has?
3. If I give you a recorded statement, will you give me a copy of the recorded statement that you already got from the person who caused the accident?
4. If I sign this medical release, will you immediately forward to me a copy of everything you get using my release?
5. Will you tell me how much money you have set aside in “reserve” to pay my claim?
6. Will you give me copies of the recorded statements that you have taken from any witnesses?
7. Will you tell me now whether there is any “umbrella” insurance coverage available to cover my claim?

8. Will you tell me whether you have already done video surveillance of me?
9. Will you give me a copy of any “index” information that you have already gotten from your computer system?
10. Will you give me a copy of any financial information that you may have already obtained on me?
11. Will you tell me which of my neighbors you have already interviewed?

Good Luck! Our experience is that the information sharing with insurance companies is a “one-way street.” You give to them and they don’t give to you!

## CHAPTER 12

# The Legal Process in Personal Injury Cases

After gathering all the facts and medical records and after your medical treatment has ended, your attorney will develop a settlement strategy with you and attempt to get your case settled with the insurance company. There are many reasons to settle a case, including the fact that Florida is a very conservative part of the country as far as jury verdicts go. Your attorney's fee will be less if your case can be settled, and your costs will usually be less than if the case goes to trial. Your attorney will help you analyze the insurance company's best offer and compare it to what you might *net* by going to trial. Of course, you must know that every case—even “obvious” cases—can be lost.

Sometimes, attempting to negotiate with an insurance company before filing suit is not a worthwhile endeavor. Insurance companies sometimes use pre-suit negotiation only to attempt to find out as much about you, your lawyer, and your doctor as they can. It is generally a dangerous practice to wait until the statute of limitations has almost expired to file suit. I have seen other attorneys



do this only to find that the defendant they sued is either not the correct defendant or is now blaming someone else.

While there are legitimate reasons for delaying filing suit, there is no excuse for the practice whereby an attorney waits until the last moment to see if the insurance company will settle your case. Sometimes out-of-state lawyers attempt to represent people with Florida claims. When the claims do not settle, they often try to find an attorney to file the case on time. I've received plenty of those last-minute calls. I reject them. I lead a balanced life and don't need to take on problems other attorneys have caused by their delays in taking action. Their inaction is not going to be my crisis. Some accident victims are ill-served by hiring attorneys who are not licensed in the jurisdiction where suit must be filed.

Once the lawsuit is filed, both sides engage in the legal process called *discovery*. Each party is allowed to investigate what the other side is going to say at trial. The defendant will be permitted access to your medical and work history, including your income records. You may have to give a deposition under oath, and you may be required to submit to a medical examination by a physician of the defendant's choosing. The defendant is also subject to discovery. He or she will answer written and oral questions about his or her own background and will have to give sworn testimony about the incident at issue.

## Insurance Company Arguments

Here are some of the arguments the insurance company will use to justify a low payment (or outright denial of your claim):

- You weren't wearing your seatbelt.
- Your car had defective equipment.
- You were drunk or impaired by legal or illegal drugs.
- You didn't see our guy blow the red light, so it's your fault you got hit.
- You exaggerated the bad guy's speed or conduct, so you are not credible.

## What Cases Do We Not Accept?

- Cases involving minor impact. Bumps and scratches on your rear bumper do not make for a good case in Florida. Sorry.
- Cases with less than \$2,000 of expected total medical bills and lost wages. Such cases can usually be settled on your own or with a less-experienced attorney. In calculating your medical bills, look at the full amount charged by your doctor, not the smaller amount actually “allowed” by the insurance company.
- Cases with significant pre-existing injury in the same body part. If you have had three back surgeries before this accident, then the chance of a jury awarding you a substantial amount of money for your back injuries here is very low.
- Cases where the statute of limitations will soon run out. Your delay is not going to become my crisis.
- Cases where you were charged in the accident.

- Cases where you assumed the risk of your injury. Please don't call us if you spent three hours in a bar and let your drinking buddy drive or if you decided to test to see how fast your mom's Lexus could really go. You got what you deserved—Sorry!
- Your case has already been filed by another attorney. We like to do things our way.
- Cases where you have a significant prior criminal history.

### **Well, Are There Any Cases Left?**

Yes, there are, and we represent lots of accident victims. Our clients are positive thinkers, not whiners or frauds.

## **The Five Deadly Sins that can Wreck Your Injury Claim**

### **1. The Client is Referred by a Lawyer to a Doctor or Chiropractor**

Some local judges call this “service” provided by some lawyers “the kiss of death” to a claim. One longtime Florida attorney was disbarred because he referred clients to a chiropractor and then told his clients to lie about the referral when asked in deposition. The problem is that jurors are highly suspicious of lawyers and doctors who have referral relationships. While the client may not know how many of that lawyer’s clients have been referred in the last twelve months to a particular doctor, you can bet that the insurance company knows or will find it out. How credible do you think that doctor’s testimony will be when the jury finds out that he treated fifty patients from the same lawyer last year?

Are there exceptions to this rule? Yes, there are.

You may have a very particular need for a doctor with a special expertise. It is perfectly legitimate for the attorney to make that suggestion/recommendation. If every client, though, is getting referred to the same chiropractor or orthopedist, that is a huge problem. So be wary of the attorney who has a stack of doctor/chiropractor cards in easy reach. You need to ask the right questions and fully understand the business relationship, if any, between that attorney and the doctor.

## **2. Hiding Past Accidents From Your Lawyer**

Once you begin a case, the other side will be interested in knowing how many past accidents you have been in. The reality is that they probably already know the answer or have easy access to that information. All insurance companies subscribe to insurance databases, and often the only reason they ask you this question is to find out if you are an honest person.

If you have been in other accidents, your lawyer can investigate this and make a determination as to whether this is a valid problem in your case. If you do not tell your lawyer, however, and you misrepresent your accident history to the insurance company, then it is almost guaranteed that you will lose your case.

One former client told us that she didn't think she needed to disclose prior accidents to us because "it didn't matter." The insurance company already knew, and when its lawyers told the judge, the case was lost. While we could have dealt with a past accident had we known about it, the mistake cost our client \$75,000.

Another client gave our confidential analysis of the good parts and bad parts of her case to her father. He gave it to his insurance company, which gave it to the defense lawyer. Bye-bye, case! Confidential means CONFIDENTIAL.

### **3. Hiding Other Injuries**

You must be up-front and honest with your attorney about any injuries that occurred before or after an accident. Again, if you saw a doctor or other health care provider, there is a record that the insurance company will find. Your lawyer can deal with this if he or she knows about it. If you lie about it and the insurance company finds out, then your case is over. Remember: there is no privacy in America today. When you make an insurance claim, your life becomes an open book.

If your doctor keeps “two sets of records” because he or she has been treating you for years and you don’t make sure that we get *all* the records, we’ll fire you. Simple as that.

### **4. Not Having Accurate Tax Returns**

In almost every case, a claimant will have lost income because of the accident. You will be able to claim lost income only if your past tax returns are pristine. You don’t want to risk going to jail by claiming a loss of income only to have your past tax returns not back up your claim. Again, being honest with your attorney is the only way to be because it can be dealt with if he or she knows about it.

Be aware that you will most certainly be required to produce your tax returns if you file a lawsuit and claim lost wages. If you are a liar and a cheat, this will come back to haunt you in your injury case, and I don't want my name associated with liars and cheats.

## **5. Misrepresenting Your Activity Level**

Insurance companies routinely hire private investigators to conduct videotaped surveillance. They also troll YouTube and other social networking sites or “Google” you. If you claim that you cannot run, climb, or stoop and you get caught on videotape doing any of those activities, or if you brag about your breakdancing abilities on the Internet, you can forget about your claim. There is no explanation (other than “You got my brother—not me!”) that can overcome the eye of the camera. One of our former clients claiming a “back injury” got caught on his roof repairing shingles. That didn't look too good, and I fired him as a client when I found out.



## Our Cases and Verdicts

Here is a sampling of cases we have handled (others are at our website at [www.WinstonLaw.com](http://www.WinstonLaw.com)). Remember that each case is different. This is not a representation of what *your* case is worth. All lawyers with any experience have won cases they probably should have lost and have lost cases that they fully expected to win. Our firm is no different in that regard. Once a case is in the hands of the jury, it is out of our control.

We do believe, however, that significant trial experience in big cases is one factor that people may use to choose one attorney over another. Many of our clients have told us that this is true. With these disclaimers in mind, here are some of our results:

**Woman who was severely injured due to defective motor home when fuel tank fell out on roadway—\$14 million recovered.** – Bradley Winston, Esq.

A fifty-six-year-old woman was traveling on an expressway when her motor home suddenly lost its fuel tank. The fuel

fire that resulted led to the death of her husband. She was ejected and broke bones throughout her entire body and suffered internal injuries and a head injury. The firm settled the woman's claims for \$14 million approximately one month prior to trial.

**Small business sustains fire loss—Jury verdicts and settlements over \$9.5 million.** – Bradley Winston, Esq.

A large shopping mall burned down in September 1997. Mr. Winston represented one of the tenants, a small software development company, and achieved an award on appeal after a jury verdict against the client's insurer, Britamco. The court also ordered Britamco to pay the client's attorney's fees for the trial and the appeal. After the insurance was exhausted, Mr. Winston continued to pursue the mall's owners and insurers and obtained total court awards and settlements for his client alone in excess of \$1.5 million. The claims against the parties that caused the fire and allowed it to spread and against their insurance company for bad faith and spoliation of evidence were part of approximately \$9.5 million in settlements achieved by Mr. Winston as one of the four attorneys for all of the tenants (the "Plaintiffs' Legal Committee").

**\$675,000 jury verdict for landlord defrauded of rent by property manager.** – Bradley Winston, Esq.

A major Las Vegas and Biloxi casino owner purchased a large office building in South Florida as an investment. The property manager lied about how many square feet were rented to

a tenant, who was eventually evicted for nonpayment of the rent on their extra space. After a hotly contested three-week trial, the jury found that the property manager committed fraud on the landlord and awarded \$675,000 as damages. The award was affirmed on appeal.

**Motorcyclist loses limb and suffers internal injuries in accident; medical providers' negligence during treatment renders motorcyclist quadriplegic—Settlements obtained exceeding \$6 million.** – Bradley Winston, Esq.

Claimant was a nineteen-year-old involved in a motorcycle accident on March 29, 2003 when he was struck and then partially run over by a truck. While being treated for these injuries, Mr. O was given excessive amounts of sedatives, narcotic pain relievers, and anesthesia by his treating physicians that caused him to go into shock and led to permanent brain damage. The insurer for the truck driver tendered its \$1 million policy. The medical providers have also paid over \$3 million in settlements with an additional \$2 million claims bill pending with the Florida legislature. The funds recovered have allowed Mr. O to obtain the care he needs for the rest of his life and for his mother to devote herself exclusively to his care.

**Firm obtains settlement of \$200,000 over doctor's \$250,000 insurance policy.** – Bradley Winston, Esq.

A girl was born with rare heart defect—medical malpractice—surgical repair botched—\$450,000 recovered after new

trial was affirmed on appeal. She lost this case at trial because the doctor lied, and his own expert pointed that out in trial. The judge ordered a new trial, and the doctor appealed. The doctor's insurance company never offered a penny to settle until the new trial was upheld on appeal. Shortly before the second trial, the insurance company settled with the family. The little girl is now ten years old and doing well.

**Security guard at hospital chokes man visiting hospital, causing him brain damage—\$2.3 million settlement obtained.** – Bradley Winston, Esq.

John Rowe went to the emergency room at Broward General Medical Center feeling depressed. He was suicidal. After waiting several hours to be seen, he decided to leave to go home with his mother. Two Broward Sheriff's Office deputies, two Fort Lauderdale policemen, and two hospital orderlies physically subdued him and improperly used a choke hold. Mr. Rowe lapsed into a coma and died two years later. The various hospitals, institutions, and agencies ultimately paid \$2.3 million in settlements to resolve the extensive civil rights litigation in both state and federal courts.

**Retired woman slips and falls in parking lot due to improper lighting—Jury verdict of \$348,000 obtained.** – Bradley Winston, Esq.

A sixty-eight-year-old woman tripped and fell in the parking lot of a shopping plaza and suffered torn knee cartilage and a broken elbow. The insurer for the owner of the parking

lot offered \$75,000 prior to trial. Following trial, the jury awarded \$348,000.

**Passenger on motorcycle suffers head injury in accident with automobile—\$1.35 million recovered.** – Bradley Winston, Esq.

Jane Doe was riding as a passenger on a motorcycle involved in an accident. Her injuries resulted in several weeks of hospital treatment while she was in a semiconscious state for several fractures and a head injury. The insurer for the automobile driver and the insurers for the young lady paid policy limits totaling \$1.35 million within a few months of the crash.

**Child shot in eye by BB gun wielded by another child—Recovery of \$600,000.** – Alexander Clark, Esq. and Bradley Winston, Esq.

Johnny Doe, age seventeen, was at a friend's home when he was shot in the right eye with a BB gun being handled by another minor child. Johnny's eye suffered permanent vision loss as a result. The insurer for the parents of the BB gun shooter paid \$600,000 to settle Johnny's claim prior to trial.

**Victim of slip and fall in home improvement store—Over \$1.25 million recovery.** – Bradley Winston, Esq.

A thirty-six-year-old woman slipped and fell on a packing strip left on the ground and jammed her finger into shelving while breaking her fall. As a result of her trauma, she developed reflex sympathetic dystrophy that spread to her other

extremities and prevented her from leading a normal life. Home improvement store paid \$1.25 million as settlement prior to trial.

**Suit against City of Hollywood, which employed driver of truck causing head-on accident—\$1.2 million verdict obtained.** – Bradley Winston, Esq.

Ronald Miller, age forty, was driving his pickup when a city employee crashed a city-owned truck head on into his vehicle. Miller's vehicle was totaled, and he suffered neck injuries and ligament and cartilage tears in both knees. The city offered to settle for \$49,000 prior to trial. After a three-day trial and less than an hour of deliberations, the jury returned a \$1.2 million verdict.

**Man suffers injury when foot is crushed by vehicle at auto auction—Jury returns verdict for \$250,000.** – Bradley Winston, Esq.

Plaintiff was an owner of a vehicle being sold at an auto auction. An employee for the auction location negligently drove plaintiff's car over his foot, which caused him to fall to the ground and suffer further injury to his shoulder and knee. Plaintiff underwent surgical treatment. Following trial, the jury returned a verdict of \$250,000.

**Motorcyclist injured when automobile driver violated right of way—\$1.1 million recovered.** – Bradley Winston, Esq.

Adult male plaintiff was driving his motorcycle when another driver caused a violent crash such that the motorcycle collided with the passenger side of the vehicle. The passenger in the vehicle suffered fatal injuries. The motorcyclist suffered a broken hand and multiple severe internal injuries. The insurers for the automobile driver paid their policy limits of \$1.1 million to settle the claim before suit.

**Insurer's bad faith results in recovery of \$465,000 where policy limits were \$65,000.** –Alexander Clark, Esq. and Bradley Winston, Esq.

Todd Vandenberg was in his early twenties when he was stuck by a car while riding a rented motorcycle. He suffered a badly crushed foot, but the insurance available was only \$65,000. The insurance company eventually paid \$465,000 to settle the claim.

**Insurer's bad faith results in recovery of \$300,000 where policy limits were \$15,000.** –Bradley Winston, Esq.

Plaintiff, a victim of a motor vehicle accident, sustained multiple fractures and collapsed lungs following a rollover accident. Plaintiff underwent surgery to his knee and spine. The insurer for the driver of the vehicle that struck the plaintiff failed to tender its \$15,000 policy limits despite having been given ample opportunity to do so. As a result, the firm

recovered \$300,000 as settlement from the insurer due to its bad faith in failing to settle the case within its policy limits when it could have and should have done so.

**\$1 million verdict obtained from obstetrician who caused broken collarbone during delivery.**— Bradley Winston, Esq.

Girl was born with broken collarbone and stretched nerves between the neck and shoulder. She underwent over ten surgical procedures to increase the range of motion in her arm and shoulder. Following a four-day trial, the jury delivered a \$1 million verdict.

**More Disclaimers — Winston, Clark & Wigand, P.A.**

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## ABOUT THE AUTHOR

# **Bradley Winston**

Brad Winston has been representing individuals against insurance companies since 1983. He limits his practice to accident, injury, and disability cases. Hopefully you have already visited *www.WinstonLaw.com*. It's got a ton of information, including up-to-date information about Florida car accident settlements and verdicts.

Brad Winston is Board Certified in Civil Trial in accordance with The Florida Bar rules, which is the highest level of recognition for competency, experience, professionalism, and ethics within an area of law. Throughout his career, Mr. Winston has fought hard to protect the rights of his clients and to ensure that they receive all that they are entitled to under the law.

Mr. Winston, who was born in Philadelphia, has lived in Florida since 1980. He received a law degree in 1988 from the Nova Southeastern University School of Law, and he has a bachelor's degree in health and hospital administration from Florida Atlantic University. He is admitted to the trial bar of the Southern

District of Florida. In 1989, Mr. Winston was admitted to practice law before the United States District Court for the Southern District of Florida.

## **Memberships**

Mr. Winston has the distinction of membership in the Million Dollar Advocates Forum, reserved for those lawyers who have obtained a verdict or settlement in excess of \$1 million. He is an active member of the American Bar Association (ABA), the American Association for Justice (AAJ), the Florida Justice Association (FJA), the Broward County Justice Association (BCJA), and is an associate of the American Board of Trial Advocates. He is recognized for his leadership roles and high level of professional certification, as indicated by these career highlights:

- Former Director, Florida Justice Association (FJA)
- Former President, Broward County Justice Association (BCJA)
- Board Certified Civil Trial Lawyer

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Bradley Winston is a South Florida personal injury attorney who is Board Certified in Civil Trial. He has over two decades of legal experience handling a wide variety of personal injury matters. Throughout his career, Mr. Winston has fought hard to protect the rights of his clients and to ensure that they receive all the financial compensation they are entitled to under the law.

Mr. Winston is recognized by and active in many leading legal organizations, including: Super Lawyers®, 2006-2011; Million Dollar Advocates Forum; American Board of Trial Advocates; American Bar Association; and the American Association for Justice.

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