



SARASOTA LITIGATOR Journal

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Florida's Ailing No-fault Auto Insurance System *(Part 2 in our series)*

Memo to Legislature: Eliminate the PIP "Threshold"

In 1971, Florida became the second state in the nation to adopt a no-fault automobile insurance system. An alternative to a fault-based system, no-fault was proposed as a way to reduce auto insurance premium costs, to lessen the number of lawsuits arising from accidents, and to quickly and adequately compensate the injured, regardless of who was at fault.



Underpinning the no-fault law is a trade-off of benefits: assuring payment of medical, disability (wage loss) and death benefits, regardless of fault, in return for a limitation on the right to sue for non-economic damages (pain and suffering).

Under Florida law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability coverage. The no-fault PIP coverage provides \$10,000 of coverage for: payment of 80 percent of reasonable medical expenses, 60 percent of loss of income, plus a \$5,000 death benefit, for bodily injury sustained in a motor vehicle accident, without regard to fault.

PIP covers the people named in the policy, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the insured vehicle.

PIP coverage gives policyholders immunity from **Continued on page 3**

CASE REVIEW

Amusement Park Injury Results in Large Settlement for Woman

This particular case highlights the potential for serious injury as a result of negligence on the part of business establishments – in this case an amusement park – that operate potentially dangerous equipment or vehicles. Jane Doe was riding a gondola at an amusement park in Florida. As her gondola arrived at a mid-station the gondola came off the ride cable and was to move forward with the assistance of an attendant. Unfortunately the

attendant failed to properly handle Jane's gondola and the approaching gondola slammed into Jane's gondola from behind. Jane immediately reported neck and back complaints to the amusement park medical personnel and thereafter sought follow-up care with her own medical providers.

Prior to this incident Jane had spinal degenerative processes that required a two level fusion of her **Continued on page 2**

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Amusement Park Injury Settlement

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fourth and fifth cervical vertebrae. One of the screws holding her vertebrae together broke in two as a result of the gondola collision. Jane underwent two additional surgeries to correct the broken screw and had new stabilization plates and screws inserted in order to stabilize her neck.

Experts in amusement ride safety were retained and, after much discovery, the amusement park agreed to settle Jane's case for a large six-figure settlement.



Now Accepting Case Referrals

The law firm of Steven T. Wittmer is accepting referrals of cases in the areas of personal injury, wrongful death, insurance disputes, workers compensation, and trust and estate litigation. We promise to work hard to earn and preserve your trust in referring cases to our firm, providing prompt, diligent and aggressive representation.

Here are 4 good reasons why you can be confident when referring cases to our firm:

1. We are a local firm. Our practice and our families are part of the fabric of the Sarasota community. Locally referred clients will receive the most attentive, personalized service.
2. Our firm understands insurance coverage issues. We can make sure all available insurance coverages are located.
3. We are passionate about obtaining the maximum recovery for our clients, and will try the case to a jury if necessary to obtain the best results.
4. Recoveries in excess of available insurance coverage generate greater recoveries for our clients and larger referral fees to referring attorneys.

CASE REVIEW

Automobile Collision Leaves Physical and Emotional Scars

On the evening of August 26, 2002, Jane Doe was with friends on their way to meet a group of other friends for ice cream. Little did she know this night would change her life forever. As she was traveling westbound on University Parkway, Jane was involved

in a rollover crash that was so severe, Bayflite helicopter emergency services were required.

Jane suffered a severe laceration from her nose to the crown of her head, temporomandibular joint (TMJ) problems and back problems. Due to the severity of her injuries, Jane was admitted to Bayfront Hospital and eventually released to follow up with her team of physicians. During the litigation of Ms. Doe's case, we discovered that the individual driving the other vehicle involved in the crash was drinking alcohol prior to the crash and his alcohol level was higher than permitted by Florida law.

Shortly before trial, the parties decided to resolve the case for a substantial amount including punitive damages that were pled against the Defendant. Fortunately for Ms. Doe, she was wearing her seat belt; otherwise, her injuries would have been much worse. Ms. Doe has now graduated from technical school and is working full time. When she looks in the mirror every day, however, she is reminded of the dangers of drinking and driving.



Florida's Ailing No-Fault System

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liability to another injured party for economic damages up to their policy limits and for non-economic damages (pain and suffering) for most injuries. This immunity protects the insured from tort actions by others for pain, suffering, mental anguish, and inconvenience arising out of the vehicle accident, except when one or more of the following exists: (1) significant and permanent loss of an important bodily function; (2) permanent injury within a reasonable degree of medical probability; or (3) significant and permanent scarring or disfigurement.

This "permanency threshold" means that lawsuits for non-economic damages may be filed in court only if injuries meet one or more of these levels.

A System With Problems

Currently, only 12 states have adopted the no-fault system. Although not at the crisis level, Florida's is costly and has serious problems. The market is competitive and coverage is readily available. Nonetheless, Florida policyholders experienced significant premium increases, particularly for PIP coverage, from 1999 through 2003. Rate decreases or small increases followed in 2004 and 2005. PIP loss costs in Florida have continued to outpace costs in other no-fault states for the past five years.

In Florida, high medical costs and utilization of medical services drive PIP costs and the incidents of PIP fraud and abuse.



PIP health care fraud and abuse are at record levels. In 2001 and 2003, the Florida Legislature enacted significant no-fault reforms. But, these reforms have not resolved the problems of fraud, abuse, inappropriate medical treatment, inflated claims and inadequate compensation to injured persons.

Insurance Industry Lobbies Hard

One of the glaring inequities of the current Florida no-fault system is the PIP "threshold" mentioned above. At the behest of the insurance industry, the Legislature again and again has made it more difficult for those severely injured to reach the "tort threshold," that is, the ability to bring a lawsuit to recover non-economic damages.

In 1976, the Legislature replaced the "dollar threshold," which specifies a dollar amount that medical costs must exceed before an injured person can pursue a liability claim, with the "verbal threshold" (which distinguishes claims in terms of the description of the injury).

Then, in 1978, the Legislature again tightened the "verbal threshold" by eliminating the right to sue for certain serious nonpermanent injuries, and raised the PIP benefit level to \$10,000.

PIP Threshold Must Go

"The PIP threshold should be eliminated altogether," argues attorney Steve Wittmer.

"As it stands, the PIP threshold acts as a barrier for people to recover damages for pain and suffering, mental anguish and just plain aggravation damages after being injured in a motor vehicle accident," Wittmer says.

"The insurance industry wanted and received the threshold in exchange for the industry's promise to



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make prompt payments under the PIP system regardless of who was at fault for the accident. The industry reasoned and convinced the Legislature that in exchange for prompt payment regardless of fault, injured people needed to prove they were permanently injured in order to recover from the at-fault party.

"The insurance companies reasoned this would keep costs down and present a barrier for people who received minimal injuries from accidents. However, insurance companies, in addition to PIP policies, also wrote liability policies so it was a way to keep their claim costs down.

"The problem is when people are seriously injured in an accident, but don't break bones. For example, if a person suffers a spinal disc injury or ligament damage, members of a jury can't 'see' the injury so they think it is not a big deal. The injured party needs to prove that he or she is permanently injured and that requires a physician's testimony. In this way, every case grows expensive and time consuming."

"...if a person suffers a spinal disc injury or ligament damage, members of a jury can't 'see' the injury so they think it is not a big deal."

According to the American Medical Association guidelines on the evaluation of a permanent injury, a patient should be treated for three to six months before a determination of permanency is made.

"The injured person doesn't understand why he or she can't recover money and must go to a doctor for such an extended period of time," Wittmer says. "Only the insurance industry benefits from this arrangement because insurers can hire the best physicians to explain why a person's injury is not permanent. As a result, the jury doesn't award any money for pain and suffering, mental anguish, etc."

Contact Your Legislator

In 2006, the Legislature will have to either renew Florida's no-fault system or create a new auto insurance system. A staff report of the Florida Senate recommends keeping the no-fault system, but strongly encourages lawmakers to make more than a dozen fixes to help reduce system complexity, fraud, abuse, and other inequities inherent in the system. We encourage you to contact your

legislator and add the elimination of the PIP threshold to that list of long-overdue changes.

The hiring of an attorney is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

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