

SARASOTA LITIGATOR JOURNAL

PUBLISHED BY THE LAW OFFICE OF WITTMER | LINEHAN, PLLC

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The law firm of Wittmer | Linehan 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:

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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.



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PERSONAL INJURY | WRONGFUL DEATH | INSURANCE DISPUTES / BAD FAITH | ESTATE & TRUST LITIGATION

AUTO INSURANCE ADJUSTMENT OF INJURY CLAIMS UNDER THE LIABILITY INSURANCE OF THE AT-FAULT DRIVER



This article is the second in a series. That first piece (published in the Winter 2012 issue) clarified auto insurance, discussing not only what kind you should purchase, but also how certain reimbursements are calculated in the event of vehicular damage. In this issue, we will discuss how Martha—our fictional character who bought a Ford Mustang for \$20,000 five years ago and was injured in an accident— must anticipate insurance company defenses in order to successfully resolve her claim.

In order to document her injuries and damages to the liability insurance company, There are four critical steps she took.

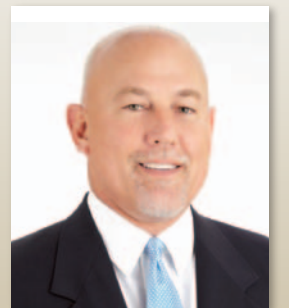
1. Martha called Wittmer | Linehan and got immediate advice. Martha understood the importance of getting immediate medical care with a qualified physician and following the plan of treatment.
2. Martha was offered treatment by the paramedics and agreed to go to the hospital to get checked out. By doing so,

she documented her need for care and made sure obvious and latent injuries were evaluated. These records will definitely show that the accident caused her need for medical treatment.

3. Martha followed the doctors' recommendations for additional testing and medical care. She knew that doing so would not only help her injuries heal more quickly, but also her healthcare providers would continue to keep accurate and complete records of her case.

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4. Martha took photographs of the damage to her car and photographs of her injuries and bruises. She also kept a journal of her visits to the medical doctors and documented her daily pain complaints. Finally, Martha gathered all of her medical records, medical bills and insurance company letters and put them in a file to deliver to her attorney.

Martha made certain she sought medical care with the required time limits so that her Personal Injury Protection benefits were available to pay for her required medical care.

EMERGENCY MEDICAL CONDITION

In the State of Florida, personal injury benefits of \$10,000 are only available if, within 14 days of the accident, a medical doctor, a doctor of osteopathic medicine, dentist, physician's assistant, or a registered nurse practitioner has expressed that the absence of medical care will result in an "Emergency Medical Condition" ("EMC"). EMC is defined as serious jeopardy to health, serious impairment of bodily functions, or serious dysfunction of bodily organs or parts. If there is no finding of an EMC, then personal injury benefits are limited to \$2,500. If no treatment is sought within the first 14 days following the accident, then personal injury benefits are automatically limited.

Martha made certain to provide accurate historical information to her medical providers. This information allowed her providers to relate her injuries to this particular accident.

CAUSATION

In Florida, in order to recover damages and injuries from an injury sustained in an accident, Martha must prove that the accident was the legal cause of her damages and injuries. "Legal cause" is defined as a negligent act that directly and in natural and continuous sequence produces or contributes substantially to producing the loss, injury, or damage so that it can reasonably be said that but for the negligent act, such loss, injury, or damage would not have occurred. Yes a mouthful, but you can see that the law will not allow Martha to recover her losses unless she can prove that the accident clearly caused those damages

and injuries. This built-in safeguard to our legal system assures that only legitimate losses are recoverable.

Finally, Martha's consistent treatment allowed her medical providers to arrive at a strong opinion that this accident caused a permanent injury to Martha.

PERMANENT INJURY

This legal term of part is another hurdle that Martha must overcome if she plans on recovering compensation for the intangible losses like pain and suffering and inability to lead a normal life. Insurance companies understand these hurdles and frequently retain medical doctors to render opinions that the injuries fail to rise to the level of a permanent injury.

In Florida, one of the most hotly disputed issues is injury "permanency." First, what constitutes a permanent injury? Under Florida's law, there must be "(a) Significant and permanent loss of an important bodily function; (b) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; (c) Significant and permanent scarring or disfigurement; or (d) Death." Without the declaration of a permanent injury, there can be no recovery of non-economic damages like pain and suffering, inability to lead a normal life, etc. Your medical professional relies on education and experience to discern and testify about your injuries and to relate them directly to the accident. However, insurance companies hire well-known defense medical doctors to render opinions about the fact that the accident did not cause injury and even if it did, such injury is not permanent. In the ensuing trial, the decision regarding injuries is left up to the jury. It is vital to your case that you have chosen a lawyer and doctor who are very familiar and experienced in presenting medical issues in lawsuits.

Access to PIP benefits, causation and permanency are but some of the pitfalls that can seriously impair any claim for damages related to a motor vehicle accident. Early action is required if you plan to present a viable claim for damages and injuries. Please contact us at Wittmer | Linehan for questions or additional information.

CASE REVIEW

WITTMER | LINEHAN SECURES LARGE SETTLEMENT FOR INJURED BIKER, DESPITE INSURANCE COMPANY TACTICS



Bill Detra was a well-respected schoolteacher at Sarasota Christian. Each school day morning he rode his bike from home to school. Bill had a passion for exercise and always took advantage of an opportunity to ride his bike. He was a very accomplished athlete, having competed in an Ironman triathlon as well as many other smaller triathlons, bike races, and swimming events.

One early September morning, Bill left his house at 6:30 to ride to school. On the way in, he was hit by a car from behind while riding in the bike lane on Bahia Vista. Bill's clavicle was fractured and his ribs were injured in this accident. These injuries prevented Bill from working for months. In addition to being unable to work, Bill became distressed over the fact that he could not exercise and perform at a level he had become accustomed to in the past.

The insurance company representing the driver who hit Bill began its predictable defense of the claim. Their approach included arguments that Bill darted out in front of the car, Bill failed to wear the proper safety gear, Bill was not in the bike lane, Bill failed to ride in the grass, and the lights on the road were not working properly so the accident was really caused by Sarasota County. Fortunately, we were prepared for this barrage of typical blame-shifting defenses. We had visited with Bill just after the accident and thoroughly inspected all the safety gear Bill had on (reflective tape on his pants, shirt, and helmet) and forward and rear facing flashing reflective lights. In addition, we performed an inspection of the lighting conditions on the road. Knowledge of insurance company tactics and conducting an early assessment of anticipated defenses is crucial.

Having prepared for the onslaught of blame-shifting defenses, we were able to kill any such arguments and the insurance company quickly tendered all liability and uninsured policy limits. This early resolution was essential to providing the Detra family with a speedy recovery of the income lost due to Bill's injuries.

If you, a family member, or a friend is injured in an accident, please make sure you retain a firm that understands how insurance companies work to defend claims. Early preparation and evidence preservation are vital to protecting your claim. Please consider Wittmer | Linehan as a wise choice to handle any type of insurance claim.