State-by-State Survey

1. Minimum liability limits

   Passenger Vehicle. F.S. §324.031 provides the following limits:

   a) in the amount of $10,000 because of bodily injury to, or death of, one person in any one crash;

   b) subject to such limitations for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one crash;

   c) in the amount of $10,000 because of injury to, or destruction of, property of others in any one crash; and with respect to commercial motor vehicles and non-public sector buses.

   Commercial Motor Vehicles. F.S. § 627.7415(B)(A) provides the following limits:

   a) $50,000 per occurrence for a commercial motor vehicle with a gross weight of 26,000 pounds or more, but less than 35,000 pounds;

   b) $100,000 per occurrence for a commercial motor vehicle with a gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds;

   c) $300,000 per occurrence for a commercial motor vehicle with a gross vehicle weight of 44,000 pounds or more;

   d) all commercial motor vehicles subject to regulations of the United States Department of Transportation, Title 49 C.F.R. part 387, subpart A, and as may be hereinafter amended, shall be insured in an amount equivalent to the minimum levels of financial responsibility as set forth in such regulations.
2. **Negligence laws** (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

   Pure comparative fault.

3. **Bodily Injury Statute of Limitations**

   Four (4) years, F.S. §95.11(a).

4. **Property Damage Statute of Limitations**

   Four (4) years, F.S. §95.11(h).

5. **Are punitive damages insurable in the jurisdiction?**

   No. Generally speaking, the inclusion of punitive damages within the liability insurance coverage is declared invalid as contrary to public policy. An active tortfeasor seeking the benefit of the liability coverage for protection against punitive damages normally will not prevail. However, if the insured seeking protection from punitive damages is liable only by reason of vicarious liability, the policy is often found to cover the damage award.

6. **Is there an intrafamily immunity defense?**

   Yes.

7. **Is there a bodily injury damage threshold? If so, what is it?**

   For tort actions brought against an owner or operator of a motor vehicle subject to the minimum liability laws F.S. §627.737 provides an injured party must show (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 scarring or disfigurement; or (d) death to recover damages for pain, suffering, mental anguish, and inconvenience.

8. **What are the quick rules on Subrogation MP/PIP?**

   For PIP, the general rule is that there is no right of reimbursement (subrogation) for paid PIP benefits. However, an insurer of a private passenger motor vehicle has a right of reimbursement (subrogation) against the insurer of the owner of a commercial motor vehicle for PIP benefits paid to a private motorist where a commercial motor vehicle is at fault.

   Regarding Med Pay, an insurer has a right of reimbursement (subrogation) for paid Med Pay benefits.
9. Are there no fault laws in the jurisdiction?

Yes, F.S. §627.733.

10. Is the customer’s insurance primary?

Yes, although coverage is determined based on the policy language.

11. Is there a seat belt defense?

Yes. In Ridley v. Safety Kleen Corp., 693 So. 2d 934 (Fla. 1996) the court held that the seat belt defense should be raised by an affirmative defense of comparative negligence.

12. Is there a last clear chance defense?


13. Is there an assumption of risk defense?

An express contractual agreement to assume the risk of injury is governed by the same legal principals which generally apply to exculpatory clauses. Therefore, they are looked upon with disfavor and in order to be enforceable, each agreement must unambiguously indicate which risks are assumed. Thus the agreement may not be interpreted to include losses resulting from the defendant's conduct unless it is clear that the plaintiff so intended. If the agreement is written by the defendant and accepted by the plaintiff, any ambiguities will be strictly construed against the defendant. O'Connell v. Walt Disney World Co., 413 So. 2d 444 (Fla. 5th DCA 1982).

Implied assumption of risk has been subsumed by the principles of negligence and comparative negligence.

14. Is there a UM requirement?

F.S. §627.727(2) requires limits of uninsured motorist coverage at least equal to the bodily injury liability limits purchased by the named insured unless the named insured selects lower limits or rejects in writing UM coverage.

15. Is there a physical contact requirement?

A physical contact requirement exists in Florida, but it is riddled with exceptions. Most notably, in Champion v. Gray, 478 So.2d 17, 20 (Fla. 1985) the Court held a claim exists for damages flowing from a significant discernible physical injury when such injury is caused by psychic trauma resulting from negligent injury imposed on another who, because of his relationship to the injured party and his involvement in the event
causing that injury, is foreseeably injured. Whether a claim for damages exists is decided on a case-by-case basis and is an issue of fact for the jury. See Zell v. Meek, 665 So.2d 1048 (Fla. 1995).

16. Is there a mandatory ADR requirement?

Only upon stipulation of the parties. A judge may refer a case to mediation if he or she determines the action to be of such a nature that mediation could be of benefit to the litigants. Florida Rule of Civil Procedure 1.710(b).

17. Are agreements reached at a mediation enforceable?

Yes, pursuant to Rule 1.730(b), Florida Rules of Civil Procedure. This rule provides in relevant part:

RULE 1.730 Completion of Mediation

(b) Agreement. If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. A report of the agreement shall be submitted to the court or a stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court. The mediator shall report the existence of the signed or transcribed agreement to the court without comment within 10 days thereof. No agreement under this rule shall be reported to the court except as provided herein. (c) Imposition of Sanctions. In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

The Florida courts have routinely enforced mediation agreements. For instance, Florida’s 5th DCA stated that “there is a more stringent standard of review, however, when the final judgment to be vacated follows a mediated settlement agreement” and the Court ultimately did not allow rescission of a mediated agreement, denying a motion to set aside judgment. Tilden Groves Holding Corp. v. Orlando/Orange County Expy. Author, 816 So. 2nd 658 (Fla. 5th DCA 2002). Similarly, in Trowbridge v. Trowbridge, 674 So. 2d 928 (Fla. 4th DCA 1996) the Court enforced a mediation agreement, stating “With the parties’ execution of an agreement, mediation contemplates a prompt and final resolution of the case.”

18. What is the standard of review for a new trial?

Abuse of Discretion. See Baptist Memorial Hospital v. Bell, 384 So.2d. 145 (F1a.1980).

19. Is pre-judgment interest collectable? If so, at what rate?
Yes. See the Florida Department of Financial Services website and F.S. §55.03 for current rate. As of January 1, 2016, it is 4.75%.

Pre-judgment interest is generally not awarded in tort actions as the damages are too speculative to liquidate before final judgment.

20. **Is post judgment interest collectable? If so, at what rate?**

Yes. Same as pre-judgment interest rate above.

21. **Is there a workers compensation exclusive remedy defense?**

Yes. See F.S. Chapter 440, et seq.

22. **Is the doctrine of joint and several liability applicable?**

No, it does not apply for causes of action that accrued after April 26, 2006. *See F.S. § 768.81.*

23. **Is there a self critical analysis privilege?**

No. All Florida privileges are statutory.

24. **Is accident reconstruction data admissible?**

The Accident Report Privilege (F.S. §316.066) prohibits the introduction of statements made by a person to law enforcement for the purposes of completing a traffic crash report. However, data collected by an officer at the accident scene is admissible and can be relied on by other experts. *See F.S. § 90.705.*

25. **What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?**

Generally, a Plaintiff is entitled to submit gross or “retail” medical bills to the jury, subject to a post-verdict collateral source setoff. The following exceptions apply:

A. Social Security Disability Insurance, Automobile Insurance (PIP/BI only), Health Insurance, HMO/PPO Insurance, and Voluntary Disability Insurance.

Plaintiff may submit gross or “retail” bills to the jury. Defendant is entitled to a post-verdict reduction in the amounts paid by automobile insurance (PIP/BI only). F.S. §786.76(1)(2)(a)(1)-(4). Defendant is further entitled to a post-verdict reduction in the amounts contractually adjusted by provider in accepting payment from any of the sources in 25(A). Plaintiff is entitled to collect damages for past medical expenses for health insurance and HMO/PPO lien amounts. *Goble v. Frohman*, 901 So. 2d 830, 833 (Fla. 2005).
B. Medicare, Medicaid, and Workers Compensation

The Florida Legislature has abrogated the common law collateral source damages rule. Trial courts must reduce awards by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources. § 768.76(1), Fla. Stat. There are certain exceptions to this rule. For example, there are no reductions for collateral sources for which a subrogation or reimbursement right exists. § 768.76(1), Fla. Stat.

Benefits received under Medicare, or any other federal program providing for a federal government lien on or right of reimbursement from the plaintiff’s recovery, the Florida Worker's Compensation Law, the Medicaid Program of Title XIX of the Social Security Act or from any medical services program administered by the Florida Department of Health shall not be considered a collateral source. § 768.76(2)(b), Fla. Stat. This exception does not result in a windfall to plaintiffs because Medicare and similar collateral sources retain a right of subrogation or reimbursement. Additionally, § 768.76 does not allow reductions for future medical expenses. Joerg v. State Farm Mut. Auto. Ins. Co., 176 So. 3d 1247 (Fla. 2015).

26. What is the jurisdiction’s rule on offers of judgment?

See Florida Rule of Civil Procedure 1.442 and Florida Statute §768.79 regarding Florida’s rules on Proposals for Settlement.

F.S. §768.79 states in any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney’s fees incurred by her or him on the defendant’s behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25% less than such offer, and the court shall set off such costs and attorney’s fees against the award. Where such costs and attorney’s fees total more than the judgment, the court shall enter the judgment for the defendant against the plaintiff for the amount of the costs and the fees, less the amount of the plaintiff’s award. If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney’s fees incurred from the date of the filing of the demand. If rejected, neither the offer or the demand is admissible in subsequent litigation, except for pursuing penalties under this section.

27. What is the jurisdiction’s rule on spoliation of evidence?

A. First Party
The Florida Supreme Court has abolished “first party” spoliation of evidence claims. Accordingly, a Plaintiff cannot bring an independent cause of action against a Defendant who negligently or intentionally destroys evidence. Martino v. Wal-Mart Stores, Inc., 908 So. 2d 342 (Fla. 2005). However, a court may impose sanctions, including negative inferences, on a Defendant for negligent or intentional destruction of evidence.

B. Third Party

Florida law still provides for an independent cause of action for third-party spoliation claims. Martino, 908 So.2d at 346, n.2. For example, a plaintiff can sue an evidence custodian, not a party to the lawsuit, for negligent or intentional destruction of evidence. The elements of the cause of action are: (1) Existence of a potential civil action; (2) A legal or contractual duty to preserve evidence which is relevant to the potential civil action; (3) Destruction of that evidence; (4) Significant impairment in the ability to prove the lawsuit; (5) A causal relationship between the evidence destruction and the inability to prove the lawsuit; and (6) Damages.

28. **Are there damages caps in place?**

There are no caps on non-economic damages for negligence actions, aside from medical malpractice. See F.S. §766.118

Punitive damages (see F.S. §768.73) may not exceed the greater of either (1) three (3) times compensatory damages, or (2) $500,000.

If conduct is (1) motivated by unreasonable financial gain, (2) is unreasonably dangerous with a high likelihood of injury, and (3) is actually known by a manger or director, punitive damages are capped the greater of either (1) four (4) times compensatory damages, or (2) $2 million.

There is no cap on punitive damages where the defendant has the specific intent to harm another person.

29. **Is CSA 2010 data admissible?**

There are no state or federal cases addressing the admissibility of CSA 2010 data at trial. In FCCI Ins. Grp. v. Rodgers Metal Craft, Inc., 2008 WL 4185997 (M.D. Ga. Sept. 9, 2008), the court declined to take judicial notice of data on FMCSA’s predecessor website, safersys.com.

30. **Briefly, does the jurisdiction have any unique rules on electronic discovery?**

Florida Rule of Civil Procedure 1.280(b)(3) allows for the discovery of electronically stored information (ESI). Rule 1.280(d)(6)(1)(2) provides that a person may object to discovery of ESI that is not reasonably accessible due to burden or cost. Then, the court may only order discovery of ESI if good cause is shown, and may further specify
conditions of the discovery, including ordering the party seeking the discovery to pay a part or all of the expenses. In determining whether the party seeking the discovery has made a showing of good cause, the court must determine whether (1) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that it more convenient, less burdensome, or less expensive, or (2) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Rule 1.380(e) provides that the court may not sanction a party who fails to preserve ESI as the result of normal, good faith operation of an ESI system.

31. **Is the sudden emergency doctrine recognized in the jurisdiction?**

Yes. In Florida, the sudden emergency doctrine requires (1) that the claimed emergency actually or apparently existed; (2) that the perilous situation was not created or contributed to by the person confronted; (3) that alternative courses of action in meeting the emergency were open to such person; and (4) that the action or course taken was such as would or might have been taken by a person of reasonable prudence in the same or similar situation. *Wallace v. Nat’l Fisheries, Inc.*, 768 So. 2d 17, 18 (Fla. 3d DCA 2000). "The presence or absence of a sudden emergency situation is a question of fact ordinarily to be decided by the jury." *Id.* at 18, (citing *Scott v. City of Opa-Locka*, 311 So. 2d 825, 826-27 (Fla. 3d DCA 1975)). [3] "So, too, is the issue of whether, under the circumstances, the defendant reacted to the situation in a prudent manner." *Id.* at 18-19 (citing *Cleveland v. City of Miami*, 263 So. 2d 573 (Fla. 1972)).

When a driver is confronted with a sudden emergency, he is not held to the same standard of care that would otherwise be expected, but neither is he excused from not acting in a reasonable and prudent manner. *Dupree v. Pitts*, 159 So. 2d 904, 906-07 (Fla. 3d DCA 1964). Once the emergency arises, a driver "is not negligent, provided he has used due care to avoid meeting such an emergency and, after it arises, he exercises such care as a reasonably prudent and capable driver would use under the unusual circumstances, which is usually [a question] for the jury." *Id.* at 906 (quoting Blashfield, Cyc. of Automobile Law & Practice, Sec. 668, pp. 538-45).

32. **Are there any rules prohibiting or limiting the use of the reptile theory at trial?**

Closing argument by motorcyclist's counsel, that implored jurors to "guess, only imagine" motorcyclist's pain, that highlighted the phrase that "[s]cars are only tiny on somebody else's face," and that told the jury for a second time that motorist "wrote a blank check" by admitting liability in collision, improperly suggested that jurors place themselves in motorcyclist's shoes and thwarted a fair consideration of the cause, at trial on damages in personal injury action. *Chin v. Caiaffa*, 42 So. 3d 300 (Fla. 3rd DCA 2010).
Statements by plaintiff’s counsel during closing argument in an action arising from plaintiff’s collision with a taxicab that he wanted the jurors to “go home and tell everyone about this case that you sat on,” and tell people “what you get” if a taxi driver runs a red light and injures somebody, and that he wanted the jurors to punish the taxicab driver, but that they could not, were an impermissible “conscience of the community” argument; the statement planted a seed to motivate the jury to include a punitive aspect in its damage award. *Airport Rent-A-Car, Inc. v. Lewis*, 701 So. 2d 893 (Fla. 4th DCA 1997).

Plaintiffs’ counsel made the following closing argument: “the law in Florida recognizes that the loss of a loved one is a traumatic and tragic experience. We want to do everything we can to stop these experiences from happening unnaturally. We want others to act responsibly[…].” Comment constituted an improper “send-a-message” argument. *City of Orlando v. Pineiro*, 66 So. 3d 1064, 1071 (Fla. 5th DCA 2011)

33. **What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?**

Florida’s civil courts include County and Circuit Courts. Florida’s County courts have original jurisdiction as follows:

(a) In all misdemeanor cases not cognizable by the circuit courts;
(b) Of all violations of municipal and county ordinances;
(c) Of all actions at law in which the matter in controversy does not exceed the sum of $15,000, exclusive of interest, costs, and attorney’s fees, except those within the exclusive jurisdiction of the circuit courts; and
(d) Of disputes occurring in the homeowners’ associations as described in ss. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

Florida’s Circuit courts have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution and except orders or judgments of a county court which are certified by the county court to the district court of appeal to be of great public importance and which are accepted by the district court of appeal for review. Circuit courts have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

They have exclusive original jurisdiction:
(a) In all actions at law not cognizable by the county courts;
(b) Of proceedings relating to the settlement of the estates of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate;
(c) In all cases in equity including all cases relating to juveniles except traffic offenses as provided in chapters 316 and 985;
(d) Of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged;
(e) In all cases involving legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011;
(f) In actions of ejectment; and
(g) In all actions involving the title and boundaries of real property.

34. **Are state judges elected or appointed?**

Florida court state judges are selected through one of two methods, depending on the level of the court. Judges of the appellate courts undergo a process of assisted appointment while judges of the trial courts participate in nonpartisan elections. In the event of a midterm vacancy, the circuit courts employ the same appointment method that the appellate courts use. Judges selected this way serve for at least one year, after which they must run for re-election.