

AUTO INJURIES AND YOU

Your Rights If You Are Involved In An Auto Accident

Some Of The Things You Should Know About
Michigan's No-fault Automobile Insurance Law



Thompson, O'Neil & VanderVeen, P.C.
A Professional Corporation
Law Offices
309 E. Front Street
P.O. Box 429
Traverse City, Michigan 49685
Telephone (231) 929-9700 Facsimile (231) 929-7262
Website: tovlaw.com

This Pamphlet is not a substitute for a lawyer. It is intended to help you understand what your rights are and how to use a lawyer. Any discussion of the law which is this brief must, of necessity, over simplify many issues. In this age of competition among lawyers and free consultation, there is no excuse for failing to consult a lawyer if you have questions. Just be sure the consultation is, in fact, free.

Most attorneys specialize. Under rules established by the Supreme Court of Michigan, personal injury cases are frequently handled on a one-third contingent fee basis. This means that the attorney fee you pay depends on the amount you recover. They can also be managed on an hourly fee basis in appropriate cases. Be sure the lawyer you contact specializes in this area of law.

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AS A MOTORIST, WHAT ARE MY INSURANCE NEEDS?

In purchasing auto insurance, you should take the following needs into account:

1. Under the law, you *must* purchase no-fault “personal injury protection benefits.” “[See page 5] If you do not buy this coverage, you will be responsible for all of your own medical expenses - *even if the other driver is at fault, and you may not have the right to sue the “at fault.”*”
2. If your vehicle has a value in excess of \$500.00, you should purchase collision coverage. Again, if you do not have coverage of your own, you may well have *no remedy* in the event your car is badly damaged - even though the other driver is at fault.
3. Every person *should* purchase both uninsured and under-insured motorist coverage. [See page 3] This coverage may cost as little as \$20.00 per year, and the benefit accrues directly to you and your family if you are hurt by a driver with no insurance or only minimal coverage. You may have to do some insurance shopping to find these types of coverage; some companies will not sell it.
4. Current state law requires a motorist to carry only \$20,000.00 liability coverage. Many policies are written to provide maximum protection of only \$20,000.00 per person to a maximum of \$40,000.00 total for a single occurrence. This is inadequate to provide fair compensation to anyone you or your vehicle might seriously hurt, and, thus, inadequate to protect your own individual assets. You should strongly consider maintaining a higher level of liability coverage.
5. If your family has good health insurance coverage, you may wish to coordinate your no-fault coverage with the health insurance. This can result in significant savings on your insurance premiums. It also may create a “lien” issue if your employer has an ERISA health plan.

WHICH OF MY LOSSES MUST MY INSURANCE COMPANY COVER?

Your own insurance company usually must pay for repairing any damage to your vehicle. The type of collision coverage purchased will determine the insurance company's obligations on this point. As written, most policies are not adequate to replace the car.

Your own company must also pay all the "first-party" or Personal Injury Protection (PIP) benefits.¹ These benefits include lifetime medical and three (3) years of lost wages and replacement service expenses (services the injured person performed around the home, but can no longer provide).

Insurance companies usually offer to policyholders uninsured motorist coverage. In the event that you are hurt by a driver who did not purchase insurance, uninsured motorist coverage makes your company responsible for "third-party" benefits as well.² Third-party benefits include all non-economic and excess economic losses you may suffer.

Many companies in Michigan offer what is called under insured motorist coverage. Since drivers are only required to purchase \$20,000.00 of insurance coverage, there is frequently not enough insurance money to fairly compensate all of the victims of a serious wreck. (\$20,000.00 would not even make a dent in a lifetime of lost earnings). By purchasing under insured motorist coverage, you can boost your own third-party benefit coverage up to a reasonable level, regardless of how much insurance the wrongdoer had.

If you are injured on a motorcycle, all of your PIP benefits will be paid by the insurer of the motor vehicle involved. Because motorcyclists are rarely at fault but often badly hurt, they receive unique treatment in Michigan's No Fault scheme.

¹ First party-benefits are more fully explained on page 7.

² Third-party benefits are more fully explained on page 7.

WHAT ABOUT THE DAMAGE TO MY CAR?

Under most circumstances, your right to recover for damage to your car depends on your own auto insurance coverage. Even if the other driver is totally at fault, you must normally look to your own insurance company to cover the loss.

If another driver is partially at fault, you can recover up to \$500.00 of your deductible from that person in Small Claims Court. If the other driver is not insured, or if your car was legally parked when it was struck, you may be able to recover from the other driver all of the damage to your car. If your car is damaged by some activity unrelated to the use, ownership or maintenance of a motor vehicle or by someone in the business of auto repair,¹ you may be able to recover from the wrongdoer.

Insurance contracts governing collision coverage are often very complex; therefore it is a good idea to review this coverage with your agent when you purchase an insurance policy. The law presumes that you have read your insurance contract, and you cannot, normally, make any claim inconsistent with the fine print. Many insurance policies contain a provision that reduces the amount that your company must pay by the age and mileage of your car. Under some policies, any deductible is waived if the police report indicates that you were not the primary cause of the collision.

Note, also, that the Michigan Supreme Court recently ruled that an insurance agent normally owes almost no duty to its customers: its only "duty" is to the insurance company to sell insurance. If you are relying on the agent to provide appropriate coverage, be sure to carefully document in writing both your request and the obligation assumed by the agent to protect you.

Finally, don't cash any check or sign any Release that says "full payment" or implies any loss of rights, without having the situation reviewed by an experienced lawyer.

CAN I RECOVER FOR MEDICAL EXPENSES?

In almost every situation, provided you comply with HMO and PPO rules, the medical

¹ If your damages are caused by a garage mechanic, for example, you may have the right to recover for other damages including damages to the vehicle.

expenses you incur as a result of a car accident should be paid by an insurance company. The only real exceptions are expenses related to injuries sustained by you in a car which you own and have failed to insure. This is a lifetime commitment: as long as your doctor relates the medical expense (including ambulance costs, prescriptions, therapy, rehabilitation, doctor and hospital bills and even the expense of transportation) to the accident, the insurance company must pay all reasonable charges.

You are not responsible for the payment of any medical expenses, provided you give prompt notice and sue over unpaid expenses before they are one year old. If you do not have insurance and a member of your household does, you may claim under the household policy. If no member of your household has auto insurance, and you were not driving, you should look to the auto insurance of the following people, in the following order, for coverage:

1. The owner of the car you were in;
2. The driver of the car you were in;
3. The owner, then the driver, of any other motor vehicle involved in the collision. The state has established a special fund to cover medical expenses of innocent victims of accidents where there is no insurance. As long as you were not driving a motor vehicle, you can present your medical expenses to this fund for payment. If there is any doubt about which insurance company is responsible, give written notice of your claim to all of the insurance companies involved.

This provision of the law is intended to cover all out-of-pocket medical expenses *regardless of fault*. Even if you were the sole cause of the accident, you literally should not incur a penny of expense for related medical treatment, ever. You *may* recover these expenses from both your health insurance and your auto insurance if you have not previously waived this right. You must normally comply with HMO rules, even to seek payment by the auto insurer.

Recently, insurance companies have begun to fight with health care providers about the reasonableness of billings. Unfortunately, the Courts have determined that in some cases the patient has no right to intervene in these payment disputes.

A key component of medical expenses may be attendant care, which is payable at full market rate. If possible, these should be negotiated before the injured person leaves the care facility for home.

WHAT OTHER DAMAGES CAN I RECOVER IF I'M HURT?

Even if you were the sole cause of your accident, up to three (3) years of lost wages and "replacement services" will be paid by your own insurance (or the next insurance

company listed on page 5).

You, or your dependents, are entitled to receive 85% of your gross wage, including all fringe benefits, up to a statutory maximum which is revised annually.¹ If you pay less than 15% of your wage in taxes, you can recover more than 85% of your wage loss.² If you were temporarily unemployed at the time of the wreck, you are entitled to wage loss equal to your last month's earnings. If your employer replaces you during the disability period, you can continue to collect lost wages after you are released by the doctor, so long as you actively seek other employment. If you return to work at a lower paying job, you can collect the difference between your new wage and your pre-accident wage during the benefit period.

In case of death, the victim's dependents receive PIP benefits equal to the "tangible things of economic value" they would have received; this may include retirement income, pension plan or wage continuation payments, health insurance coverage and other non-wage income.

Replacement services of up to \$20.00 per day will be paid for three (3) years to cover the expense of hiring someone to perform domestic services. This provision is particularly important but obviously inadequate if the injured person is a homemaker with children. Replacement services will be paid to cover mowing the lawn, preparing meals, shoveling snow, washing dishes and clothes, baby sitting children, cutting wood or any other job the injured person did around the home and is now unable to do.

Further, these amounts may be paid to the spouse, older children, or grandparents of an injured person. In the case of replacement service expenses, it is essential that the person or persons providing services submit a signed bill to the insurance company every 30 days, itemizing the services performed.

You may recover additional replacement service expenses from the other driver's insurance company. This right is discussed in the following section.

The dependents of a person killed in a motor vehicle collision are entitled to recover similar benefits. In all cases, it is useful to ration services on a daily basis, to stay within the 1974 \$20.00 per day "cap."

¹ This figure is reduced by any governmental benefits or wage continuation payments received as a result of the injury if they duplicate no-fault benefits.

² The term "Temporarily Unemployed" is more fully addressed on page 13.

WHEN IS THE OTHER DRIVER RESPONSIBLE?

Medical expenses, wage losses and replacement services are called “first-party benefits,” because they are normally paid by the injured person’s own insurance company. Because first-party benefits don’t provide a complete recovery, you may be able to look to the driver whose carelessness caused your injuries for compensation. These additional benefits, recoverable from the other driver or his insurance, are called “third-party benefits.”

A driver is responsible for all damages he causes if he or she has not carried insurance. If he or she has auto insurance, the negligent driver is not responsible for damages that are covered by first-party benefits. If the victim has “excess” economic damages (i.e. wage loss or domestic service expenses above P.I.P. limits) the at fault is legally responsible to pay them. In the case of no-fault auto insurance only, the company is even responsible for intentionally caused injuries. The at-fault driver is responsible for “non-economic” damages only if the victim suffered a threshold injury. A threshold injury includes:

1. Any injury which results in death;
2. Permanent serious disfigurement, or;
3. The serious impairment of a body function.

By law, the jury in each case must decide whether a threshold injury has occurred.¹ If you believe you have a threshold injury, you should talk to a lawyer.

The driver at fault, or his insurance company, is obligated to compensate the victim for any reasonable loss the victim has suffered beyond “first-party” benefits. This includes lost wages over the statutory maximum or after three (3) years, replacement services after three (3) years or over \$20.00 per day, and a number of non-economic losses including compensation for pain and suffering or embarrassment and humiliation. In other words, it includes all damages not paid by the injured person’s own insurance. The estate of a person killed in a wreck can recover the economic losses of the dependents and also fair compensation for the loss of society and companionship suffered by the survivors. Similarly, the spouse or children of a person suffering a threshold injury may recover for the non-economic damage to the family relationship.

An injury victim driving an uninsured vehicle may be denied the right to collect any non-economic damages, even if he is catastrophically injured by a drunk who is completely at fault! You must keep your vehicle insured.

¹ This section of the law has been changed, or proposed for change, many times in the past two decades. It may well change while this brochure is in print.

WHAT IF I AM, OR THE PERSON DRIVING MY CAR, IS PARTIALLY AT FAULT?

Fault is irrelevant where “first-party” or “PIP,” benefits are concerned, provided the victim didn’t intentionally cause his own injuries. The only question to be considered is which insurance company is responsible. With respect to “third-party benefits,” you are not held responsible for a driving mistake made by the driver of your vehicle as long as you did not contribute to that mistake (for example, by purchasing alcohol for the driver.) As a result, if you are seriously injured by a driving error committed by your own driver, you may look to that person’s insurance company for the payment of “third-party benefits.”

You have a right to recover compensation from your driver’s insurance, even if the driver is a spouse, a parent or other relative or a co-worker. No-fault insurance is compulsory and it is intended to establish a fund to compensate injured persons - even if they are family.

If some act of your own contributed to causing your injuries, you are still entitled to recover for the share of your injuries caused by another person’s error. In Michigan, we have what is called modified comparative negligence. This means that if you are 25% responsible for a wreck, but another driver is 75% responsible, you can recover 75% of your total damages from the other driver. On the other hand, if you are more than 50% at fault you cannot recover any non-economic damages.

Some actions, such as the failure to renew your driver’s license, *may* not be taken into account when fault is allocated if they did not contribute to the collision or resulting damages. Under Michigan law, the failure to use your seat belt results in an automatic assessment of 5% contributory negligence; if your claim is against another driver.

HOW LONG CAN I WAIT BEFORE TAKING ACTION?

The law encourages prompt resolution of no-fault claims. As a result, there are short time periods within which an injured person must act; *the failure to act within the proper time period results in a complete waiver of rights*. These time periods are called statutes of limitations.

You must give prompt notice of your losses to your insurance company. The insurance company is not obligated to make payment of any claim of expense until thirty (30) days after it has received reasonable verification of the claim or expense. If any *first-party* benefits are not promptly paid you must actually file suit against the insurance company within *one year* of incurring the unpaid expense. Failure to file suit extinguishes the claim. There are horror stories about people negotiating with insurance companies until the deadline passes, only to have the claim totally barred by time.

You have *three years* in which to file suit against a negligent driver for *third-party* benefits. If a defective road or an intoxicated driver contributed to the wreck, you must act more quickly to preserve your rights. In each situation, evidence must be preserved, witnesses located and wrongdoers identified. You should not delay taking action until the last moment.

Pursuant to recent decisions, children and mentally incompetent persons are bound by some of the above time deadlines, despite their inability to protect themselves. They do not have one year after reaching the age of majority or becoming competent to act. For their benefit, suit must be filed by a guardian or Next Friend.

There are also “notice” provisions which require that allegedly responsible persons or entities receive notice of your potential claim. These notice provisions may be as short as 60 to 120 days after the incident.

WHAT IF I’M HIT BY A CAR, BUT I’M NOT IN A MOTOR VEHICLE?

The No-Fault Act protects every person who is injured, provided a motor vehicle played some role in causing the injury. Motorcycles and snowmobiles are not included in the definition of motor vehicles; however, virtually any other motorized vehicle with four or more wheels which is either operated on the road or designed for operation on the road is included.

Pedestrians, bicyclists, snowmobilers, equestrians and anyone else not in a motor vehicle who is hurt by a motor vehicle must look first to his or her own family no fault insurance coverage for first-party coverage, followed by the remaining sources listed on Page 5. Motorcyclists receive PIP benefits from the insurer of the vehicle involved.

The clearest cause of the injury need not be a motor vehicle collision, provided a motor vehicle played *some* role in causing the injury. If you suffer injury while entering, leaving, loading, unloading or servicing a motor vehicle, the No-Fault Act may provide insurance coverage depending on several factors, including whether you are “touching” the car, whether workers comp applies and whether the automobile played only an “incidental” role. If a heart attack or other episode of illness results in a car accident, first-party benefits may be payable if further injury results.

As described previously, the rules for operators of motorcycles are unique.

WHAT IF I’M IN AN ACCIDENT WHILE I’M ON THE JOB?

Motor vehicle collisions which occur during employment hours bring into play both the No-Fault Act and worker’s compensation. The benefits recovered under each system are very similar, and the injured worker cannot recover duplicate benefits from both insurance companies. It is essential to thoroughly investigate each potential source of benefits, however, since variations in the two systems can result in large discrepancies in the benefits payable, and one may supplement the other.

The worker's compensation insurance company may have a lien on any benefits recovered from a wrongdoer, however, this lien usually does not apply to motor vehicle collision injuries. The comp carrier loses this right to recover "first-party-type benefits" if the wrongdoer is a motorist, because the insurance company normally has no lien on "third-party benefits" to repay "first-party benefits." The injured victim need not repay the worker's compensation insurance company out of his or her recovery of non-economic losses and excess economic losses. The worker's compensation insurer is treated exactly as a no-fault insurance company paying first-party benefits would be treated. Whenever such a lien is claimed, you must contact an attorney immediately.

Often you must educate either the worker's compensation adjuster, or the no-fault adjuster, to include supplemental benefits where both compensation systems apply.

WHAT CAN I DO ABOUT DRUNKS, TRAINS, LOOSE ANIMALS, BAD ROAD AND OTHER HAZARDS?

There are three main contributors to automobile injuries:

1. *Drivers* or other people who contribute to driver fault such as bartenders who

serve too much alcohol or employers who are careless about vehicle maintenance or employee working hours;

2. *Vehicles* which are not properly designed, manufactured or maintained; and
3. *Roadways*, due to improper design or inadequate maintenance.

Whenever a wrongdoer's responsibility for an injury or death arises from some activity other than ownership, maintenance or use of a motor vehicle, the wrongdoer remains liable for all damages. The victim can still recover first-party benefits from his insurer, but the insurer may now have a lien on some elements of the compensation received from a "third party."

Liability for any injury caused by some activity other than the use of a motor vehicle is governed by substantially different legal rules. The statute of limitations may result in less time to bring action, and **it may be essential that the victim not settle his or her claim against any other wrongdoer**. Injuries caused by a drunk driver are a good example. Any person who provided alcohol to someone already visibly intoxicated, or to a minor, is responsible for the damages caused by that person. Action must be taken within *two years* of such an accident, and *the drunk driver must be a party to the legal action*. In addition, the bar must be notified of the claim within a matter of months.

When injuries are caused, in part, by a defective road, the Road Commission or the State Highway Department must be notified immediately of the injured person's belief that a problem with the road may have contributed to the accident. Any road which is not reasonably safe because of mistakes in maintenance will make the responsible road authority liable for resulting injuries. Tort reforms judges have attempted to limit this duty to the road bed, eliminating road authority liability for traffic control signs, shoulders, obstacles in the right-of-way and design issues.

CAN I COLLECT LOST WAGES IF I AM NOT CURRENTLY WORKING?

The No-Fault Act normally requires your insurance company to pay lost wages only for work you "would have performed" but for the injury. As a result, the loss of the capacity to work is not usually compensated as a first-party benefit, unless it results in an actual loss of earnings. There is one exception to this rule: Anyone who is "**temporarily** unemployed" at the time of the injury may have the right to collect wage loss benefits based upon his or her last month of full-time employment.

It is clear that laid-off or striking workers can collect wage loss benefits during their disability period: the legislature specifically mentioned them in defining temporary unemployment. On the other hand, a worker who suffers a second disabling illness or injury probably cannot collect wage loss benefits, because the Michigan Supreme Court does not consider such a person to be “temporarily unemployed.”

If you have a history of gainful employment, or if you were actively seeking work at the time you were disabled you may be entitled to first-party wage loss benefits. You should make a claim for lost wages based on your last full-time job or your anticipated job and consult a lawyer.

As of this writing, the survivors of a temporarily unemployed person who is killed in a car accident cannot collect lost wages from his or her insurer based on this provision. Because there is no logical reason for this distinction, it is possible that this rule will change.

WHAT IF THE OTHER DRIVER IS FROM OUT OF STATE OR UNINSURED?

Anyone who drives in Michigan, or who allows his or her car to be driven in Michigan, becomes subject to the insurance laws of this state. As a result, non-resident drivers have the same obligations and enjoy the same protection as a Michigan motorist. Similarly, any insurance company which sells insurance in Michigan must provide Michigan insurance benefits even if their contract with a non-resident motorist would not normally require it.

Uninsured motorists, on the other hand enjoy few of the protections of the law. An uninsured motorist who negligently causes injuries is responsible for all medical expenses, all property damages and any vehicle damage. Usually, such people cannot pay for the damage they cause, though, which is why you should purchase uninsured motorist protection for your family.

WHAT IF THE INSURANCE COMPANY DOES NOT PAY “FIRST-PARTY” BENEFITS?

First-party benefits are due thirty (30) days after written proof of the loss is submitted to the insurance company. In the way of proof, most companies require that you submit a copy of their claim form, along with appropriate wage stubs, hospital records and invoices, and billings from any other provided of services.

If the insurance company delays payment more than thirty (30) days after receiving reasonable proof of the particular loss, it may have to pay 12% interest on the

amount due. If a Court later decides that the insurance company was unreasonable in failing to make a disputed payment, the Court can award the injured person punitive interest; it can also order the insurance company to pay the injured person's attorney fee.

It is essential to provide complete proof of loss at an early date so that benefits are not delayed and interest begins to run. You should normally keep a copy of all records provided to the insurance company along with a copy of your cover letter listing what was provided and when. In this way, you can later prove that you fulfilled your obligation to the insurance company. Remember that once you have made a claim against the insurer, you cannot count on the company or its employees to look out for your best interests. You must protect yourself. It is a wise idea to have an attorney review any submission you make to the insurance company. This can be done on an hourly basis. A firm handling your third-party claim may be willing to review this matter at no charge to you.

Do not forget the "one year back" rule: if the insurer does not make prompt payment, you must initiate suit within one year of incurring the expense, or your right to collect it will probably be lost entirely.

WHAT DO I DO IF I HAVE BEEN INVOLVED IN A CAR ACCIDENT?

Here is a checklist of things to consider if you are involved in a collision.

2. Notify the police immediately.
3. Notify your own insurance company, in writing, as soon as possible.
4. Use good sense when discussing the accident. Do not give interviews or statements explaining the accident without consulting a lawyer.

5. Immediately provide your own insurance company with any necessary information to verify wage losses and medical expenses. Payments are due thirty (30) days after *written proof* is submitted.
6. Buy a notebook or receipt book or use your computer to keep track of replacement services provided on a daily or weekly basis. Again, a written verification of these billings must be sent to the insurance company. Keep a copy for your records. The billings normally must be signed by the provider.
7. If your insurance company does not promptly agree to pay first-party benefits, send written notice to every other insurance company involved in the matter and contact a lawyer. Be mindful of "one year back." especially where there are audits or delays in payment or priority. Save your "Explanation of Benefit" forms.
8. If you may be charged with responsibility for someone else's injuries, especially if those injuries may exceed your policy limits, consult a lawyer to protect you from excess liability.
9. Do not attempt to negotiate a settlement on your own and don't negotiate any check with a restrictive legend such as "full payment." If you do, at least consult a personal injury lawyer to review the terms of the settlement on your behalf before signing any document. Consider an hourly retention: you have that choice.
10. Consult a lawyer to review the amount of first-party benefits you are receiving. A lawyer should provide this review for no charge or for a minimal fee if your situation is complex.
10. Preserve evidence. Keep the car or any failed party and take photographs of the site, the vehicle and any injuries. Preserve the names and addresses of witnesses.
11. In selecting a lawyer, be sure you hire a firm that has experience in the area of your needs. Since most firms work for the same contingent fee of one-third, you can hire the best firm for the same price.

This pamphlet is not a substitute for a lawyer. It is intended to help you understand what your rights are, and how to use a lawyer. Any discussion of the law which is this brief must, of necessity, oversimplify many issues. Furthermore, the legislature has developed the habit of revising the No-Fault Act almost yearly, and our printer cannot always keep up with the changes. In this age of competition amount attorneys and free consultation, there is no excuse for failing to consult a lawyer if you have any

questions. Just be sure the consultation is, in fact, free.

Most attorneys specialize. Under rules established by the Michigan Supreme Court, personal injury cases are frequently handled on a one-third contingent fee basis. When that arrangement is selected, the attorney fee you pay depends on the amount of compensation you recover. Be sure the lawyer you contact specializes in this area of law.

George R. Thompson
Daniel P. O'Neil
John R. VanderVeen

Law Offices
309 E. Front St
P.O. Box 429
Traverse City, MI 49685
Telephone (231) 929-9700
Facsimile (231) 929-7262
800-678-1307
Email: info@tovlaw.com
Website: tovlaw.com