

I. INTRODUCTION – DON'T LEARN THE HARD WAY!

For over fifty years our Law Firm has been representing people who have suffered serious personal injury in motor vehicle accidents. That experience has enabled us to learn some important lessons about the insurance needs of our clients. The sad truth is that many people fail to buy the right type and amount of automobile insurance. This failure can often have catastrophic consequences. Do not wait until an accident happens to find out if your auto insurance policy adequately protects you. This informational brochure is intended to help you make that determination. Although the subject of no-fault automobile insurance can be complicated, we have attempted to simplify the issues so that you can make the proper decisions regarding your insurance needs. Our most important advice, however, is simply this: *do not delay in addressing this issue!* Educate yourself about the issues and make your decision now, before it is too late.

II. REVIEW YOUR POLICY

Before reading any further, you should have your automobile insurance policy and the declaration page readily available for reference. This will enable you to check your individual coverages as we explain your options. In reviewing your policy, the most important page is the *declaration page* which is often the first page of the policy. The declaration page contains a description of the vehicles you have insured and the various coverages and limits of coverage you have purchased for those vehicles. It also identifies the named insured and those drivers who are excluded from coverage. The second part of the insurance policy is the actual *insurance contract* itself. This is typically a multiple page document that defines the coverages you have purchased and sets forth applicable conditions and exclusions. If you do not have your complete insurance policy and the declaration page, contact your agent immediately to obtain these documents. They are very important and should be a permanent part of your personal records.

III. UNDERSTAND THE BASICS OF AUTO NO-FAULT INSURANCE

After you have secured a copy of your auto insurance policy and the declaration page, the next step is to learn a few basic concepts regarding the Michigan No-Fault Automobile Insurance Law. The No-Fault Law went into

effect in 1973. Michigan is only one of approximately fifteen states that have a no-fault system. Although there are many complex issues dealing with the Michigan no-fault Insurance system, the basic idea is quite simple. The essential principle of no-fault is to guarantee payment of certain medical and wage loss benefits to all victims of motor vehicle accidents regardless of who was at fault. In order to fund such a system, however, the No-Fault Law imposes certain imitations on the rights of accident victims to pursue personal injury liability claims against the negligent party who inflicted the injury.

Under the Michigan No-Fault Law, it is helpful to remember that every individual who suffers personal injury in a motor vehicle accident has the right to pursue two separate and distinct claims. The first claim is for *no-fault PIP benefits*. The second claim is a personal injury *tort liability claim* against the at fault party. A few words regarding these two claims are in order.

No-fault PIP benefits are legally referred to as “*Personal Insurance Protection Benefits*” and are payable (with a few exceptions) to all persons suffering accidental bodily injury in a motor vehicle accident even though the injury was the fault of the injured person. These PIP benefits consist of four specific kinds of benefits: (1) unlimited medical expenses for life; (2) limited wage loss benefits for a three year period; (3) limited domestic replacement service expenses for a three year period; and (4) limited survivor's loss benefits for a three year period if an accident results in death. In the vast majority of cases, no-fault PIP benefits are paid to the injured victim by that person's own no-fault automobile insurance company.

If a motor vehicle accident results in serious injury (legally described as “*serious impairment of body function or permanent serious disfigurement*”), the auto accident victim can also pursue a *tort liability claim* against the party at fault for the purpose of recovering *noneconomic loss damages* (i.e., pain and suffering, disability, loss of function, denial of social pleasure and enjoyment, etc.). A tort liability claim can also be made for *excess economic loss benefits* to recover out of pocket economic expenses not compensable by no-fault PIP benefits. Excess economic loss claims do not require proof of serious impairment of body function or permanent serious disfigurement. Injured victims who have valid tort liability claims will receive compensation from the insurance company of the party at fault.

The Michigan No-Fault Automobile Insurance Law is a *compulsory insurance system*. This means that everyone who owns or registers a vehicle in

Michigan must buy a no-fault automobile insurance policy. Every no-fault policy sold in Michigan must contain certain ***compulsory coverages***. The two most important compulsory coverages are: ***(1) no-fault PIP benefits and (2) bodily injury liability coverage***. *Even though both of these compulsory coverages are included in every no-fault auto policy sold in Michigan, the insured person must nevertheless make some very important decisions regarding certain specific aspects of these two compulsory coverages.* In the next section, we will help you understand your choices regarding these compulsory coverages and give you some practical advice to help you make the right decision.

IV. COMPULSORY COVERAGES – OUR RECOMMENDATIONS

When it comes to the compulsory coverages, there are two basic decisions you must make: (1) *Do you want coordinated or uncoordinated PIP benefits?*; and (2) *How much bodily injury liability coverage do you want?* Our recommendations regarding these two issues are discussed below:

A. For PIP benefits – we recommend uncoordinated coverage –
There are two basic forms of no-fault PIP benefits: *uncoordinated benefits and coordinated benefits*. If you choose *uncoordinated PIP benefits*, your no-fault insurance company pays your medical expenses and wage loss without regard to whether you have separate health insurance and disability insurance. In other words, your no-fault PIP benefits are *primary*. If you purchase *coordinated PIP benefits*, then your no-fault insurer only pays medical expenses and wage loss benefits that are not paid by separate health insurance and disability insurance. In other words, when you choose coordinated PIP benefits, your PIP benefits are *secondary* to other health and accident coverages. *Under the Michigan No-Fault Act, an insurance company is required to offer the choice of coordinated versus uncoordinated benefits.* Typically, uncoordinated no-fault PIP benefits are more expensive than coordinated PIP benefits. The extent of the savings, however, varies considerably from company to company based upon a variety of variables. Even though it is generally more expensive, ***we recommend that you purchase uncoordinated no-fault PIP benefits.*** There are several reasons for this recommendation:

Reason #1: Purchasing uncoordinated PIP benefits protects the insured person from depleting health insurance coverages that may contain lifetime limitations.

Remember, when you buy coordinated no-fault, you force your health insurance plan to pay benefits first. If you have health insurance coverage that contains lifetime coverage limits and you are seriously injured in an auto accident, you may substantially deplete your health insurance coverage and have inadequate protection left should you incur substantial expenses for some non-accident related illness or condition in the future. If you buy uncoordinated no-fault PIP coverage, you never have to worry about diminishing your health insurance coverage because of an auto accident injury.

Reason #2: Purchasing uncoordinated coverage insures freedom of choice for medical care.

If you purchase coordinated PIP coverage and you are also insured by an HMO or similar managed care plan, the current No-Fault Law requires that you exhaust all medical treatment available to you under your plan before you can compel your no-fault insurance company to pay medical expenses you incur as a result of seeking treatment outside your plan. This results in a substantial loss of choice for those patients injured in auto accidents who believe their injuries can be better treated by non-plan medical providers. If you purchase uncoordinated PIP benefit coverage, this is never a problem because you can be treated anywhere you want as long as the services are “reasonably necessary” and the charges are “reasonable” in amount.

Reason #3: Purchasing uncoordinated PIP benefit coverage protects a liability settlement from health insurance liens and reimbursement claims.

If you are seriously injured in a car accident as a result of the negligence of the other driver and you recover a liability settlement for those injuries, you may have to pay all or a portion of that liability settlement to your health insurance plan if your plan contains valid and enforceable lien and/or subrogation language. This is often the case with self-funded health insurance plans established under the federal ERISA law. These health insurance liens are sometimes enforceable even though your liability settlement represents only *noneconomic damage* and your health insurance plan paid only medical benefits. *In other words, you may be required to pay back apples with oranges!* If you purchase uncoordinated no-fault PIP coverage, your no-fault insurer pays medical and wage loss in the primary pay position. This is important because under current

law, a no-fault insurer is not permitted to claim reimbursement from a liability settlement that represents only noneconomic loss. Therefore, by purchasing uncoordinated no-fault coverage, you protect any liability settlement you may recover from being depleted by a health insurance plan that has valid lien/reimbursement rights.

Reason #4: Purchasing uncoordinated no-fault PIP coverage results in less bureaucracy and fewer hassles in processing your claim.

If you purchase coordinated no-fault PIP coverage, the law requires that you first exhaust all benefits that are paid or payable by any health or accident coverage that may be available to you. This means that you must first submit the claim to these other insurers, recover whatever payment is available, obtain an explanation of benefits regarding that payment, and then submit the balance of your claim to your no-fault PIP insurer for payment. Therefore, that you are required to process two separate claims with two or more insurance companies in order to recover full payment of your expenses. If you purchase uncoordinated no-fault PIP coverage, you need only deal with your no-fault insurer who must pay your claim as the primary insurer regardless of whether your expenses are paid or payable by other sources. Therefore, the claim process is easier and more streamlined.

Based on the reasons set forth above, we recommend that you select uncoordinated no-fault PIP coverage.

B. For liability insurance – we recommend six figure coverage limits – Even though the No-Fault Law requires that everyone carry bodily injury liability coverage, the minimum coverage required by law is only \$20,000.00 per person/\$40,000.00 per occurrence. We believe these minimum liability coverages are woefully inadequate to adequately protect you. In determining the amount of liability coverage you need, you should keep in mind the two-fold purpose of liability coverage. First, liability insurance coverage protects your financial assets if you cause serious injury or death to another person as a result of your negligence. Second, liability coverage ensures that those innocent victims you injure will receive fair compensation for the damages you have inflicted. Even though we all like to think we are careful and prudent drivers, the fact is that we are all capable of careless conduct that can cause serious damage to others. Typically, no one intends to run a red light or

disregard a stop sign. However, these unfortunate errors can be committed by any of us. Therefore, it is important that we obtain enough liability coverage to protect our assets and to fairly and adequately compensate the victims of our own wrongdoing.

Based on the foregoing, we recommend you purchase at least \$300,000.00 single limit liability insurance coverage.

V. OPTIONAL COVERAGES – OUR RECOMMENDATIONS

In addition to the choices you must make regarding compulsory insurance coverages, you also have important decisions to make regarding certain *optional coverages* that are available to you through most insurance companies. These two optional coverages, along with our recommendations, are discussed below. Typically, both of these coverages are *very inexpensive* and, therefore, quite affordable for most consumers.

A. *We recommend you purchase uninsured motorist benefits* – Uninsured motorist benefits are an important optional coverage that will protect you in the event you suffer a serious injury as a result of the negligence of someone who has no insurance coverage. If this unfortunate circumstance occurs and if you have purchased uninsured motorist benefits, your uninsured motorist coverage will be available to compensate you for your liability claim in the same way as if the at fault driver had insurance. Although insurance companies are not required to offer uninsured motorist benefits, almost all of them do. This coverage is typically very inexpensive.

Based on the foregoing, we recommend you purchase at least \$300,000.00 single limit uninsured motorist benefit coverage.

B. We recommend you purchase underinsured motorist benefits – Underinsured motorist benefits will protect you if you suffer serious personal injury or wrongful death as a result of the negligence of someone who does not have adequate liability insurance to fully compensate you for your loss. For example, if an at fault driver runs a red light and causes you to suffer a permanent injury but the at fault driver does not have enough liability coverage to fully compensate you for your damages, you can recover the difference between the at fault driver's liability coverage and your underinsured motorist coverage. In this situation, if the at fault driver had the minimum \$20,000.00 of liability coverage and you purchased \$300,000.00 of underinsured motorist coverage, there would be an additional \$280,000.00 of liability coverage available for your liability claim. *In our opinion, underinsured motorist coverage is one of the most important insurance coverages you can buy to protect you and your family.* Moreover, it is our experience that most serious auto accident injuries are, in fact, caused by people who do not have enough liability coverage to adequately compensate their victims. Therefore, the only way you can protect yourself against these unfortunate situations is by purchasing optional underinsured motorist benefits. Unfortunately, however, there are some insurance companies doing business in Michigan that do not sell underinsured motorist benefit coverage. Because we believe this particular coverage is so important, we recommend you seriously consider changing insurance companies if your company does not offer underinsured motorist coverage.

Based on the foregoing, we recommend you purchase at least \$300,000.00 single limit underinsured motorist benefit coverage.

VI. CONCLUSION – ACT NOW!

The decision you make regarding your no-fault automobile insurance coverage will be one of the most important decisions you make regarding the financial security of your family. Therefore, you should take the time to become knowledgeable about the Michigan no-fault automobile insurance system, the contents of your current auto insurance policy, your specific personal needs, and the insurance options available to you to meet those needs. Do this now. Do not wait for an accident to happen to find out, like so many people often do, that you did not have the

appropriate automobile insurance coverages. Take the time today to determine if you are adequately protected.

If you have any questions or desire any additional information regarding your rights and benefits under the Michigan No-Fault Automobile Insurance Law, do not hesitate to contact our Law Firm. It would be our pleasure to assist you.