

GENERAL EXPLANATION OF THE MICHIGAN AUTO NO-FAULT LAW

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The Michigan No-Fault Automobile Insurance Act (MCL 500.3101, *et seq*) was adopted by the Michigan Legislature in 1972 and went into effect in October of 1973. Although the original intent of the law was to simplify motor vehicle accident claims, in many respects, the opposite has occurred. There have been almost 2,000 appellate court decisions written over the last 30 years interpreting various aspects of the Michigan no-fault system, which has now become quite complex.

Under the Michigan No-Fault Act, every motor vehicle accident that occurs in the State of Michigan resulting in personal injury or death, **creates two (2) separate and distinct claims**. The first claim is for **no-fault personal protection insurance (PIP) benefits**. The second claim is the **third party tort liability claim** for recovery of noneconomic damages and excess economic damages. Each of these two (2) claims will be summarized briefly below.

I. THE NO-FAULT PIP BENEFIT CLAIM

The claim for no-fault PIP benefits has several different names. Legally, these benefits are statutorily referred to as "*personal protection insurance benefits*." However, they are also referred to as "*PIP benefits*," "*no-fault benefits*," "*first party benefits*," and "*economic loss benefits*." Hereafter, they will be referred to as PIP benefits. Under the Michigan law, these PIP benefits are typically paid by the victim's own insurance company and are always paid regardless of who was at fault for the accident. Moreover, PIP benefits are available not only to drivers and occupants of motor vehicles, but are also payable to pedestrians, bicyclists and other bystanders. There are basically four (4) types of no-fault PIP benefits payable under the Michigan system. Those benefits are summarized below.

A. PIP Benefit #1: Allowable Expense Benefits

The Michigan law has the broadest and most generous medical expense and patient care provisions of any no-fault statute in the United States. Section 3107(1)(a) states that an injured person is entitled to recover certain "*allowable expenses*" which are statutorily described as "***all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation***." The statute contains no further definition of the scope and extent of these allowable expenses. It is clear, however, that allowable expenses are **payable for life and payable without dollar limitation**. Various court decisions have established that allowable expense benefits include a wide variety of products and services, including

medical and hospital expenses; in-home nursing or attendant care; residential accommodations; room and board expenses; physical and vocational rehabilitation; special motor vehicle transportation; medical transportation mileage; guardianship expenses; etc.

B. PIP Benefit #2: Work Loss Benefits

No-fault PIP benefits also include limited benefits for loss of income. Specifically, §3107(1)(b) provides that when an injured victim cannot work as a result of an auto accident, work loss benefits are payable for up to a maximum of three (3) years from the date of the accident. The statute defines work loss benefits as compensation for “*loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured .*” Under the statute, work loss benefits are payable at the rate of 85% of gross pay, including overtime. However, the work loss benefit cannot exceed a monthly maximum, which is adjusted in October of every year to keep pace with the cost of living. At the present time, the monthly maximum work loss benefits is approximately \$4,200 per month. In addition, those individuals who are considered “*temporarily unemployed*” are also entitled to work loss benefits under the provisions of Section 3107a of the Act.

C. PIP Benefit #3: Replacement Service Expenses

PIP benefits under the Michigan No-Fault Law also include reimbursement for certain domestic services incurred by the injured person to replace those that he or she would have performed had the injury not occurred. These benefits are payable under §3107(1)(c) and consist of those expenses which are “*reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent .*” Under the statute, replacement service expenses cannot exceed \$20 per day and are only payable for a period of three (3) years from the date of the accident. Typically, these benefits include such things as housekeeping, yard work, home maintenance, child care, etc.

D. PIP Benefit #4: Survivor’s Loss Benefits

Where a motor vehicle accident results in death, PIP benefits, in the form of *survivor’s loss benefits* are payable to the dependents of the decedent. These survivor’s loss benefits are defined under §3108 of the No-Fault Act and consist of the “*loss . . . of contributions of tangible things of economic value . . . that dependents of the deceased . . . would have received for support during their dependency . . . if the deceased had not suffered the accidental bodily injury causing death and expenses, not exceeding \$20.00 per day, reasonably incurred by these dependents during their dependency . . . in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit if the deceased had not suffered the injury causing death.*” As with work loss benefits and replacement service expenses, survivor’s loss benefits are payable for

three (3) years and are subject to the same maximum monthly benefit ceiling which is applicable to work loss claims. Typically, survivor's loss benefits are comprised of several components, including after tax income, loss of fringe benefits, and a replacement service component. However, only those persons who are classified as "*dependent*" on the decedent may make a claim for survivor's loss benefits. In addition to these benefits, motor vehicle accidents resulting in death also qualify for payment of funeral and burial expenses under §3107(1)(a) which shall not be less than \$1,750.00 or more than \$5,000.00, depending upon the extent of the coverage purchased by insured person.

II. THE TORT LIABILITY CLAIM

The tort liability claim is also referred to by different names, including "*the third party claim*," "*the tort claim*," "*the residual bodily injury claim*," "*the noneconomic loss claim*," etc. Hereafter, this claim will be referred to as the liability claim. Under the Michigan No-Fault Law, an accident victim has the right to pursue a tort liability claim against the at fault driver for two (2) separate and distinct types of damages: (1) noneconomic losses and (2) excess economic losses. The rules with regard to these two (2) claims are clearly different and are summarized below.

A. Liability Claims for Noneconomic Loss Damages

Under the Michigan No-Fault Act, an accident victim may pursue a liability claim against the at fault driver for noneconomic losses *only if* the victim has sustained, what is commonly referred to as a "*threshold injury*." Under the Michigan No-Fault Law, there are three (3) categories of threshold injury: *death, permanent serious disfigurement, and serious impairment of body function*. Of these three (3) thresholds, the one requiring "*serious impairment of body function*" is the one that is most frequently pursued and litigated by accident victims. The definition of *serious impairment of body function* has changed dramatically over the last 30 years, dependent largely upon which political party is in control of the Michigan Supreme Court and/or the Legislature. It is important for accident victims to understand the concept of noneconomic loss damages. These damages typically relate to diminished quality of life and consist of such things as pain and suffering, disability, incapacity, loss of function, depravation of social pleasure and enjoyment, mental anguish and distress, etc. However, as previously indicated, unless the injured person has sustained one of the three (3) threshold requirements, there is no right to recover noneconomic loss damages.

B. Liability Claims for Excess Economic Loss Damages

In addition to the right to seek recovery for noneconomic loss damages, the injured person may also pursue a tort liability claim against the party at fault for certain economic losses in excess of those compensable by the injured person's no-fault PIP benefits. Typically, excess economic losses consist of work loss in excess of the monthly and three (3) year limitations applicable to PIP work loss claims and the daily and three (3) year

limitations applicable to PIP replacement service expense claims. These claims for excess economic loss are materially different from claims for noneconomic loss damages because excess economic loss claims **do not require proof of a threshold injury**. Moreover, in those situations where the at fault driver is uninsured, the injured person can recover all economic losses against the at fault party, even those that were compensable by the victim's no-fault PIP benefits.

CONCLUSION

The passage of the Michigan No-Fault Automobile Insurance Act has spawned the creation of a large body of complex law. Clearly, Michigan citizens have very substantial rights under the No-Fault Law. ***However, it is only when people have a complete understanding of their legal rights, that they will be assured of receiving all benefits and recovering all damages to which they are legally entitled.*** In cases of serious bodily injury, it is always advisable to talk to experienced attorneys who fully understand the Michigan no-fault system and who regularly handle no-fault automobile accident cases. Victims who deal directly with insurance companies without the benefit of competent legal advice, are often short changed. ***This is one area where ignorance can be very costly!*** For more information regarding the Michigan No-Fault Law, please feel free to call our office at (517) 394-7500 or review the more detailed information presented on this website under the topics ***"No-Fault PIP Benefit Claim"*** and ***"Motor Vehicle Liability Claims."***