

## **MOTOR VEHICLE LIABILITY CLAIMS**

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If a person sustains bodily injury in a motor vehicle accident caused by the fault (i.e., negligence) of another motorist, the Michigan No-Fault Statute permits the victim to pursue a liability claim. This liability claim (also called the tort claim) permits the victim to recover compensation for two (2) distinct types of damage: **excess economic loss** and **noneconomic loss**. In order to successfully pursue a liability claim for either noneconomic loss or excess economic loss, the injured person must first prove that the other driver was, to some significant extent, at fault for the accident. The legal word for fault is “*negligence*,” which is nothing more than the failure to act as a reasonably careful person would act under the same or similar circumstances. Violations of the Michigan Motor Vehicle Code, including speeding, failing to stop at a stop sign, failing to yield, running a red light, improper lane usage, etc. are all evidence of negligence. If both the injured party and the other driver were, in some way, negligent in causing the accident, the injured party may still recover damages but the amount of those damages would be reduced by the percentage of the injured party’s fault. This is referred to as the “**rule of comparative negligence**.”

An accident victim who has a valid liability claim under the Michigan No-Fault Law is entitled to be compensated for that claim by the insurance company of the negligent party. If litigation is required to enforce that claim, the lawsuit must name the negligent party. However, the damages are actually paid by the negligent party’s insurance company up to the amount of liability insurance coverage carried by the negligent party. If the damages exceed the negligent party’s liability insurance coverage, the negligent party is personally responsible for the excess. Liability claims for noneconomic loss and excess economic loss are summarized below.

### **I. CLAIMS FOR NONECONOMIC DAMAGES**

Under Michigan law, **noneconomic damages** consist of those losses that affect a person’s **quality of life**, such as pain and suffering; incapacity, disability and loss of function; diminished social pleasure and enjoyment; mental anguish and emotional distress; scarring and disfigurement, etc. Under the Michigan No-Fault Law (§3135) an accident victim is only entitled to recover damages for noneconomic loss if the victim sustained a “**threshold injury**.” Under the law, a threshold injury consists of one or more of the following: **(1) serious impairment of body function; (2) permanent serious disfigurement; or (3) death**.

In 1995, the Michigan Legislature enacted an important amendment to the No-Fault Statute (1995 PA 222) that, in §3135(7), redefined the threshold element of “**serious impairment of body function**.” The new definition states: “**serious impairment of body function means an objectively manifested impairment of an important body function**

***that affects the person's general ability to lead his or her normal life.*** The Legislature did not, however, define the threshold element of “*permanent serious disfigurement*.” The issue of whether an injury rises to the level of “*serious impairment of body function*” or “*permanent serious disfigurement*” is a matter that depends upon the facts and circumstances of each individual case. Obviously, the more serious the injury, the more likely that the injury “*crosses the threshold.*” However, the courts have held that an injury need not be permanent in order to be a “*serious impairment of body function.*”

In the case of *Kreiner v Fischer*, 471 Mich 109 (2004), the Michigan Supreme Court significantly restricted the type of injuries that can qualify as a *serious impairment of body function*. In this decision, the Court held that the injured person's normal life before the accident must be compared with his or her life after the accident, with some notable difference between the two required. However, the *Kreiner* case reaffirms the legal principle recognized in previous cases that the injured person need not prove a permanent injury or a permanent disability.

In determining whether a person's injury constitutes serious impairment of body function, the *Kreiner* decision set forth a “*non-exhaustive list of objective factors*” that courts should consider in determining whether an injury constitutes serious impairment of body function. Those factors are: (1) the nature and extent of the impairment; (2) the type and length of treatment required; (3) the duration of the impairment; (4) the extent of any residual impairment; and (5) the prognosis for eventual recovery. With regard to this list, the Court stated:

*“This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves. For example, that the duration of the impairment is short does not necessarily preclude a finding of a serious impairment of body function. On the other hand, that the duration of the impairment is long does not necessarily mandate a finding of a serious impairment of body function. Instead, in order to determine whether one has suffered a serious impairment of body function, the totality of the circumstances must be considered and the ultimate question that must be answered is whether the impairment affects the person's general ability to conduct the course of his or her normal life.”*

Clearly, the *Kreiner* decision does not provide any precise rule, formula or specific test that must be applied to determine whether an injury constitutes a serious impairment of body function. On the contrary, the Court emphasized that each injury must be decided “*on a case-by-case basis because the statute requires inherently fact specific and circumstantial determinations.*” In light of the Supreme Court's decision in *Kreiner*, it has become ***critically important*** for auto accident victims to consult with attorneys who are very knowledgeable about the Michigan No-Fault Law in order to learn whether their injury satisfies the legal definition of the threshold elements of “*serious impairment of body*

*function” and/or “permanent serious disfigurement.”*

The 1995 amendments to the Michigan No-Fault Law also provide that noneconomic damages are not recoverable if the injured person is more than 50% comparatively negligent. In addition, injured persons are precluded from recovering noneconomic damages under the 1995 amendments if they were driving an uninsured motor vehicle at the time of the accident which was owned by the injured person. Therefore, in assessing liability claims for the noneconomic loss, it is important to thoroughly evaluate and compare the conduct of the victim and the other driver and to also determine if the victim complied with the mandatory insurance requirements of the statute.

## **II. CLAIMS FOR EXCESS ECONOMIC LOSS DAMAGES**

Excess economic loss damages consist of those past, present and future out-of-pocket expenses that are not compensable by no-fault PIP benefits. The No-Fault Statute provides that if an injured person suffers excess economic loss damages, then the injured person can recover those damages in the liability claim against the negligent driver who caused the accident. For example, these excess economic loss damages would be recoverable if the injured person has a high income and the monthly no-fault wage loss benefit does not fully compensate that person for his or her full lost wages. Similarly, if the injured person is disabled permanently or for an extended period of time and, as a result, will sustain a loss of income beyond the three (3) year no-fault work loss benefit period, then excess economic loss could be recovered in the liability claim. With regard to claims for excess economic loss damage, it is very important to emphasize that the No-Fault Statute and case law are very clear that ***an injured person need not prove a threshold injury (serious impairment of body function or permanent serious disfigurement) in order to recover excess economic loss damages.*** It is also important to note that under the 1995 amendments to the No-Fault Statute, liability claims for excess economic loss are not prohibited where the injured person was more than 50 percent comparatively negligent or where the injured person was the owner and operator of an uninsured motor vehicle involved in the accident.