BICYCLES AND THE MICHIGAN NO-FAULT LAW

What Happens When a Person is Injured in a Bicycle/Automobile Collision?

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The dramatic increase in the number of people riding bicycles is encouraging for many reasons. However, it has also resulted in a significant increase in the number of bicycle/automobile collisions. Below are the potential insurance claims available to a cyclist injured in a bicycle/automobile collision.

NO FAULT INSURANCE CLAIM

Under Michigan law, when a cyclist sustains an "*accidental bodily injury*" arising out of an incident involving the use of a motor vehicle, the cyclist is entitled to "*no-fault benefits*." These benefits are also referred to as "*PIP benefits*" or "*first-party benefits*." No-fault benefits are payable regardless of who was at fault for the collision.

The Four Major No-Fault Benefits

Under the No-Fault Act, there are four major types of benefits an injured person may be entitled to receive:

(1) ***Allowable Expenses.*** The law provides that an injured person is entitled to "*all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation*." These benefits are payable for life without any type of "*cap*" or "*ceiling*." Examples of items that have been deemed allowable expenses under this provision of the No-Fault Act include medical bills, therapy bills, in-home care, medical equipment, renovations to make a home or apartment accessible, vocational rehabilitation and medical mileage/transportation expenses. [MCL 500.3107(1)(a)]

(2) ***Wage Loss.*** If a person cannot work as a result of injuries sustained in an automobile collision, they are entitled to receive work loss benefits, which are payable for up to a maximum of three years. Under the statute, work loss benefits are payable at a 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. The current monthly maximum is $5,392.00. [MCL 500.3107(1)(b)]

(3) ***Replacement Services.*** An injured person may also receive reimbursement, in an amount not to exceed $20.00 per day, for expenses incurred as a result of having others perform domestic-type chores that the injured person would have performed, if not for injuries sustained in the collision. The types of services typically considered compensable under this provision of the No-Fault Act include things such as housekeeping, yard work, laundry, home maintenance and babysitting. [MCL 500.3107(1)(c)]

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(4) ***Survivor's Loss Benefits.*** When a motor vehicle collision results in death, dependents of the decedent are entitled to recover "*survivor's loss benefits*." These benefits are payable for three years and are subject to the same monthly maximum applicable to work loss claims. Survivor's loss benefits are comprised of several components, which include after-tax income, lost fringe benefits and replacement services. [MCL 500.3108]

Additionally, when an automobile collision results in death, the law provides for a separate benefit for the reimbursement of funeral and burial expenses in an amount not less than $1,750.00, nor more than $5,000.00, depending upon the type of coverage contained in the insurance policy. These benefits apply to charges from a funeral home, grave site and related expenses. [MCL 500.3107(1)(a)]

Which Insurance Company is Responsible for Paying the Benefits?

The No-Fault Act contains a "*priority of payment*" system that determines which no-fault insurer is responsible for the payment of PIP benefits. As a general rule, an injured person receives no-fault benefits from his or her own no-fault insurance company (even if they are riding a bicycle at the time of the crash). If a cyclist does not have automobile insurance, the next no-fault insurer with priority for the payment of these benefits is the insurer for the cyclist's spouse or a relative living in the same household.

If an injured cyclist does not have a no-fault insurance policy and does not live with a relative who has an insurance policy, he/she will obtain PIP benefits from the insurer of the "*vehicle involved*" in the incident.

Finally, if the vehicle involved in the incident was not insured, the cyclist will submit a claim for no-fault benefits to the Michigan Department of State, Assigned Claims Facility, which will randomly assign the claim to one of the many auto insurance companies authorized to do business in the State of Michigan. [MCL 500.3114 and MCL 500.3115]

Time Limitations for No-Fault Claims

(1) ***The One-Year Notice Rule.*** The No-Fault Act requires that an injured person must provide written notice to the appropriate insurance company within one year from the date of the incident. The notice must include the name and address of the injured person, as well as the time, place and nature of injury. [MCL 500.3145]

(2) ***The One-Year Back Rule.*** Assuming written notice has been given to the insurance company within the first year of the incident, a claimant must take legal action if a particular expense is not paid by the insurance company within one year from the date the expense is incurred. [MCL 500.3145]

(3) ***Exceptions to the Statutory Time Limitations.*** There are very limited exceptions to the time limitations that apply to no-fault claims. However, an injured person should avoid relying on these exceptions, if possible. Courts have been extremely harsh in enforcing these rules. In the case of the one-year back rule, the Michigan Supreme Court has ruled that the time limitation even applies to minors and those deemed mentally incompetent.

LIABILITY CLAIM

If a cyclist sustains an injury in a crash caused by the negligence (*i.e.*, fault) of a motorist, Michigan law permits the injured cyclist to pursue a liability claim. A liability claim permits an injured person to recover compensation for two distinct types of damages: *non-economic loss* and *excess economic loss*.

Non-Economic Damages

Non-economic damages consist of those losses that affect a person's quality of life, such as pain and suffering, disability, loss of function, scarring and disfigurement, and diminished social pleasure and enjoyment.

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However, in order to fund the system that provides for the guaranteed no-fault benefits outlined above, the law imposes certain limitations on the rights of injured victims to bring liability claims against negligent parties. Accordingly, for an injured person to recover against a driver who has caused a collision, the victim must establish that he/she has sustained a "*threshold injury*." Under the law, a threshold injury consists of one or more of the following types of injuries: (1) death; (2) permanent serious disfigurement; and/or (3) serious impairment of body function. [MCL 500.3135]

The law defines "*serious impairment of body function*" as "*an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life*." [MCL 500.3135(7)]

Excess Economic Damages

Excess economic loss damages consist of past, present and future out-of-pocket expenses that are not compensable in the form of no-fault benefits. For example, if a person suffers wage loss beyond three years, or lost earnings above the monthly maximum provided under the No-Fault Act, he/she can claim these losses as damages in a liability claim. Importantly, a person does not need to have a "*threshold injury*" in order to have a claim for excess economic damages. Rather, they simply need to prove economic loss as a result of the injuries sustained in the collision.

Comparative Negligence

In an automobile/bicycle collision where both the motorist and the cyclist are at fault, the cyclist still may be entitled to recover damages, but the amount of damages will be reduced by the percentage of the cyclist's fault. This legal concept is referred to as the rule of comparative negligence. However, if the injured person is found to be more than 50% comparatively negligent, he/she is not entitled to recover non-economic damages.

Time Limitations for Liability Claims

The statute of limitations for a liability claim is generally three years from the date of the occurrence. However, there are exceptions to this time limitation, including claims made by minors or people deemed mentally incompetent.

UNINSURED/UNDERINSURED MOTORIST CLAIMS

Oftentimes, the injuries suffered by an automobile collision victim are caused by a negligent party who either has no liability insurance or has inadequate liability insurance to fully compensate the injured person. In these situations, the negligent driver is typically not collectible. However, if the injured person has purchased uninsured and/or underinsured motorist coverage, it may provide him/her with another avenue of recovery.

Uninsured motorist coverage is an optional coverage. It allows an injured person to assert his/her liability claim directly against his/her own insurance company who will then "*stand in the shoes*" of the negligent driver. This type of coverage allows the injured person to recover non-economic damages and excess economic damages up to the limits of his/her uninsured motorist coverage in exactly the same manner as he/she would have had if the negligent party had been insured.

Underinsured motorist coverage is similar to uninsured motorist coverage. If an injured person has purchased underinsured motorist coverage, he/she can pursue that portion of the liability claim not covered by the at fault driver's insurance through a claim made against his/her own insurance company.

Individual contracts can, and often do, contain strict rules that must be followed to preserve uninsured and underinsured motorist claims. Strict time limitations are also often written into insurance policies for uninsured and underinsured motorist claims. Therefore, extreme caution is necessary to protect these types of claims.

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