

No-Fault Automobile Insurance

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Prior to the enactment of state no-fault insurance legislation, recovery for personal injuries sustained in an automobile accident were subject to common law negligence rules under a state's "tort liability" system. Under the tort-based system, an accident victim recovers damages for both economic and non-economic damages from the party who was responsible for causing the accident, in a "third-party" claim. Such damages include property damage, medical expenses, lost wages and compensation for the victim's pain and suffering.

Problems with the tort-based system prompted a need for insurance reform. For example, as in any personal injury case, the accident victim must prove the responsible party's negligence in order to prevail. This is an expensive and time consuming process during which time the injured victim must pay his or her own medical bills. Contributory and comparative negligence rules also apply which, depending on the jurisdiction, may limit or prevent the plaintiff's recovery. Further, the liability limits of the wrongdoer's liability insurance, if in fact there is insurance, may be so low that it does not fully compensate the accident victim for his or her losses.

To try and address these problems, as well as reduce automobile accident litigation and soaring insurance premiums, a number of states enacted no-fault automobile insurance legislation. Under a typical no-fault system, the accident victim recovers damages from his or her own insurer in a first party claim, rather than suing the negligent driver in a third party claim. No-fault insurance reimburses the accident victim for their “basic economic loss” regardless of who was at fault for the accident.

Briefly summarized, basic economic loss generally consists of the following benefits up to the jurisdiction’s statutorily-prescribed maximum:

1. All necessary doctor and hospital bills and other health service expenses.
2. A percentage of lost earnings.
3. Payment for reasonable and necessary expenses the injured person may have incurred because of an injury resulting from the accident, such as the cost of hiring a housekeeper or necessary transportation expenses to and from a health service provider.
4. A death benefit payable to the estate of a covered person.

Once the initial coverage for basic economic loss has been exhausted, additional benefits may be available if the applicable insurance policy has been endorsed to include Optional Basic Economic Loss coverage and/or Additional Personal Injury Protection coverage.

No-fault benefits generally continue to be paid until it is determined that the injured person is no longer in need of medical care. Thus, at some point during the period following the motor vehicle accident, the claims representative will set up an appointment with a health care provider to conduct an “independent medical examination.” There has been much criticism, however, as to whether or not these examinations are truly “independent,” particularly insofar as the independent medical provider is hired by the insurance carrier to conduct the examination and make a determination.

Based upon the results of the medical examination, the claims representative will either continue or deny all or part of the no-fault benefits. Typically, the accident victim’s only recourse when faced with a denial of benefits is to appeal to the state’s insurance department, or resort to formal arbitration or litigation to have the no-fault benefits reinstated.

Although almost half of all jurisdictions passed some form of no-fault automobile legislation, not one jurisdiction enacted a “pure” no-fault system. Under a pure no-fault system, accident victims would receive substantial benefits to compensate them for their losses, however, they would have absolutely no legal right to pursue a lawsuit against the party responsible for the accident.

Under existing no-fault schemes, a tort recovery is generally still permitted if the accident victim meets certain criteria. In order to recover monetary compensation for “pain and suffering” in a bodily injury claim against the negligent party, the accident victim’s medical expenses must exceed the state’s statutory maximum, or their injuries must satisfy the state’s “serious injury” requirement. This standard is also known as the “no-fault threshold.”

For example, New York State’s no-fault law defines a “serious injury” as “a personal injury which results in:

- (1) death;
- (2) dismemberment;
- (3) significant disfigurement;
- (4) a fracture;
- (5) loss of a fetus;
- (6) permanent loss of use of a body organ or member;

(7) significant limitation of use of a body organ or member;

(8) significant limitation of use of a body function or system; or

(9) a medically determined injury or impairment of a non-permanent nature which prevents the plaintiff from performing substantially all of the material acts which constitute plaintiff's usual and customary daily activities for not less than ninety days during the one hundred-eighty days immediately following the occurrence of the injury or impairment.”

Bodily injury claims are scrutinized very carefully by insurance carriers to determine whether the no-fault serious injury threshold has been reached. Thus, if the medical records clearly indicate that the client has not met the no-fault threshold, or the issue of liability is in dispute, the insurance carrier will most likely deny any monetary settlement.

If an insurance carrier denies settling a case, or makes what appears to be an insignificant offer of settlement, the only recourse is to file a formal lawsuit. However, in cases where it is clear that the client has not meet the no-fault threshold, a lawsuit may not be recommended. Insurance carriers who do not believe a case has satisfied the “significant injury” requirement will usually make a motion to the court to dismiss the case for failure to meet the no-fault threshold. These motions are commonly granted in cases where serious injury is difficult to

prove and unsupported by medical records.

In addition, a court may award costs and attorney's fees to the defendant or their attorney if it finds that the plaintiff or plaintiff's attorney engaged in frivolous conduct. The court can also impose financial sanctions against the plaintiff or plaintiff's attorney for pursuing a frivolous action, such as one where the no-fault serious injury threshold clearly has not been met.

If the medical records are equivocal, i.e., there is a question as to whether the client has sustained injuries that meet the no-fault threshold, the insurance carrier may also deny settling the case, although most will negotiate in good faith. In offering a settlement under this scenario, the insurance carrier will generally consider such factors as the cost of retaining a lawyer to defend the case and the likelihood that they will be able to have the case dismissed early on in the lawsuit.

Of course, if the medical records indicate that the client has suffered serious injuries which are compensable under the law, it is likely that the insurance carrier will settle the claim. If the insurance carrier refuses to settle a meritorious claim within a reasonable period of time, a formal lawsuit may be commenced.

Many jurisdictions have viewed no-fault insurance as a failure in that it has not substantially reduced the cost of insurance or the incidence of

automobile-accident litigation. as expected. There have been efforts to repeal or amend state no-fault laws. Georgia and Connecticut repealed their no-fault laws entirely, and New Jersey and Pennsylvania made their no-fault laws optional.

Most recently, federal legislation has been introduced in Congress that would preempt state automobile insurance laws and create a federal no-fault system. The stated purpose of the pending legislation is to enable drivers to choose a more affordable form of auto insurance that will also provide for more adequate and timely compensation for accident victims.

Under the Auto Choice Reform Act of 1999 (S.837 and H.R. 1475), a motor vehicle insurer is authorized to offer a choice between a personal injury protection system, or a traditional tort liability system. Motorists who fail to select a particular system would be deemed to have selected the tort maintenance system in effect in the motorist's state of residence.

The personal injury protection system is basically a pure no-fault system under which the motorist waives their right to assert certain tort claims and the insurer is liable for the primary payment of economic loss benefits. For each accident, the insurer would be required to pay each personal injury protection insured an amount equal to (1) the minimum per person limit of liability insurance for personal injury under the relevant state financial responsibility law,

or (2) the minimum level of insurance required for no-fault benefits in a no-fault state. The insured basically waives any tort claims against the other driver except for a claim for uncompensated economic loss based on fault. The tort maintenance system insured would be entitled to coverage at a level equivalent to that required under the applicable state financial responsibility law for bodily injury liability.

Both the House and Senate version of the Auto Choice Reform Act are presently pending in Committee.

More information concerning no-fault automobile insurance may be found in this author's book entitled "No-Fault Automobile Insurance," published by Oceana Publishing Company, Dobbs Ferry, New York.

Additional information concerning the problem of identity theft may be found in this author's legal almanac entitled "The Law of Identity Theft," published by Oceana Publishing Company, Dobbs Ferry, New York.

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