



THE TRUSTED SOURCE REGARDING THE MICHIGAN AUTO NO-FAULT LAW

Comparing Auto Insurance Systems:

Pure Tort Law

VS.

The Michigan Auto No-Fault Law

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May 2018



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I. INTRODUCTION

Legislation has been introduced seeking to repeal the Michigan Auto No-Fault Insurance Law and to replace it with a pure tort liability legal system (HB5517 and 5518). In order to better appreciate the implications of such a dramatic change in legal systems, one must first understand the basic operation of each system so that appropriate conclusions can be drawn regarding the wisdom of such proposals. To that end, the basic operation of each reparation system is summarized briefly below.

II. SUMMARY OF REPARATION SYSTEMS

A. PURE TORT LIABILITY LAW

Under a pure tort liability system, victims suffering injury in a motor vehicle accident can only recover compensation for their medical and rehabilitation expenses, related expenses for care and recovery, and loss of income from those drivers who are found to be “*at fault*” (i.e., negligent) for causing the accident. If the injured victim cannot prove that one or more drivers were at fault for the accident, the victim cannot recover for any such losses and expenses.

Moreover, under the doctrine of “*comparative negligence*,” the at fault driver can only be held liable to the extent of the percentage of fault attributable to that driver when compared to the total fault attributable to all drivers involved in the subject accident. For example, if the injured victim is 40% at fault and the other driver is 60% at fault, the victim can only recover 60% of their losses from the at fault driver.

Frequently, the issues of fault, comparative fault, and percentage fault allocation are issues that require a lawsuit to resolve. Moreover, under a tort liability system, the injured victim’s ability to recover compensation for accident-related medical expenses, expenses of care and recovery, and noneconomic damages is, for all practical purposes, a function of how much liability insurance coverage the at fault driver purchased. In this regard, it is critically important to note that, in Michigan, drivers are required by statute, to only carry \$20,000 of liability insurance, which is far too little to fully compensate any seriously injured victim. However, it should be noted that under a tort liability system, the at fault driver retains full personal financial liability for all expenses and damages suffered by victims, regardless of how much liability insurance coverage the at fault driver purchased. Therefore, in a pure tort system, those persons who wish to adequately safeguard their personal assets should purchase large amounts of liability insurance to protect themselves in the event they are at fault in causing catastrophic damages to an innocent victim.

In a tort liability system, it is also important to keep in mind that there are some cases where a motor vehicle accident is not caused by the fault of any driver, but rather is the result of an event beyond the control of the driver. Some examples of such “*non-fault based accidents*” include scenarios where a deer unexpectedly darts out in front of a car (in 2016 there were 1,240 injuries and 14 deaths attributable to deer dart outs); a vehicle experiences unexpected mechanical failure causing a collision, such as a blown tire; or a driver suffers an unpredictable, incapacitating health event, such as a heart attack, resulting in loss of vehicular control, causing a collision with other vehicles. In those unique situations, the tort liability system offers no remedy whatsoever to those persons suffering bodily injury.

B. THE MICHIGAN AUTO NO-FAULT LAW (MCL 500.3101, *et seq*)

Under the current Michigan Auto No-Fault Insurance Law, every person (except those who are disqualified) who sustains bodily injury in a motor vehicle accident is entitled to certain “*no-fault first-party PIP benefits*,” which are payable regardless of who was at fault for the accident. These PIP benefits include the following: (1) lifetime, uncapped medical and rehabilitation expenses, in-home attendant care, residential accommodations, transportation expenses, and related costs of care and recovery; (2) three years of wage loss benefits, currently capped at approximately \$5,400 per month; (3) three years of domestic replacement service expenses capped at \$20 per day; and (4) three years of survivor’s loss benefits if a person is killed in a motor vehicle accident leaving surviving dependents.

Under the Michigan no-fault system, the general rule is that injured victims receive their PIP benefits from their own insurance company, without regard to how or why the accident happened. In limited situations, however, the person may be required to pursue PIP benefits from the insurance company of one or more of the drivers involved in the collision, such as where the victim is a non-driver who does not have no-fault automobile insurance in his or her household.

Under the current Michigan No-Fault Law, if a crash causes a victim to suffer a “*threshold injury*” (statutorily referred to as serious impairment of body function, permanent serious disfigurement, or death), the victim can recover certain “*noneconomic loss damages*” (i.e., pain and suffering, etc.) in tort from the at fault driver, assuming that the victim is not more than 50% at fault for causing the crash.

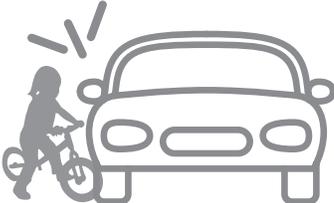
Because all injured victims receive the above-described no-fault PIP benefits without regard to fault, injured persons cannot sue at fault drivers in tort for any of those expenses. ***Therefore, Michigan drivers have no need to purchase extensive and expensive amounts of liability insurance to cover their potential tort liability for such substantial expenses.***

| PURE TORT | MICHIGAN NO-FAULT |
|---|--|
| In a pure tort liability legal system, victims can only recover for their losses and expenses if it is proven that the other driver was at fault. | Under the Michigan auto no-fault legal system, all victims can recover wage loss and medical expenses regardless of who is at fault. |

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III. REAL WORLD COMPARATIVE EXAMPLES

NOTE: Each of the victims in the separate accident scenarios described below suffered serious bodily injuries resulting in hospitalization, surgery, and prolonged disability. The comparative outcomes for each injured person are analyzed under the Michigan Auto No-Fault Insurance Law and under a pure tort liability system.

| ACCIDENT SCENARIO #1 | ACCIDENT DESCRIPTION |
|---|--|
|  | <i>Albert</i> is driving his car when he loses control on black ice and hits a tree, causing injury to himself and his front seat passenger, <i>Bill</i> . |
|  | <i>Charlie</i> is driving his truck through an unmarked intersection with his passenger, <i>Dave</i> , in the front seat, when he collides in the intersection with a car driven by <i>Ernie</i> , in which his passenger, <i>Frank</i> , is riding in the front seat. It is believed that both drivers are at fault to some extent. |
|  | <i>Gina</i> is a 10-year-old girl riding her bike along the side of a road when she is struck by a car that is owned and operated by an uninsured, drunk driver. |

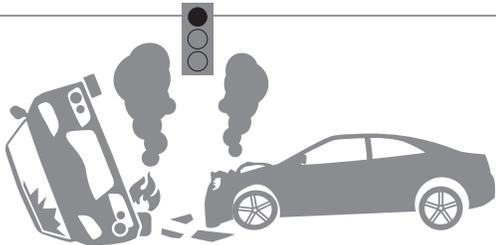
| VICTIM OUTCOME: PURE TORT LAW | VICTIM OUTCOME: CURRENT NO-FAULT LAW |
|---|---|
| <p>Albert is not entitled to recover anything, because there is no other at fault driver who can be sued in tort. Bill can only recover his expenses and damages if he can prove that Albert was “<i>negligent</i>,” i.e., at fault, for causing the accident. Even if Bill can prove Albert was at fault, the amount Bill will be able to recover will largely be determined by how much liability insurance Albert carried.</p> | <p>Regardless of fault, Albert and Bill are entitled to lifetime benefits for all reasonably necessary medical and rehabilitation expenses, in-home attendant care, and other allowable expenses, in addition to three years of wage loss and domestic services. In addition, Bill can sue Albert for noneconomic damages if Bill’s injury constitutes a “<i>threshold injury</i>.”</p> |

| VICTIM OUTCOME: PURE TORT LAW | VICTIM OUTCOME: CURRENT NO-FAULT LAW |
|--|---|
| <p>Charlie will only be able to recover his expenses and damages if Ernie is at fault, and Ernie will only be able to recover his expenses and damages if Charlie is at fault. Charlie, Ernie, Dave, and Frank will only be able to recover their expenses and damages from the at fault drivers in the percentage amounts that each driver is at fault, which will likely require litigation to determine. In any event, the amount these victims will be able to recover will be largely determined by how much liability insurance the at fault driver carried.</p> | <p>Regardless of fault, Charlie, Dave, Ernie, and Frank are all entitled to lifetime benefits for all reasonably necessary medical and rehabilitation expenses, in-home attendant care, and other allowable expenses, in addition to three years of wage loss and domestic services. In addition, all four victims can sue whoever is the at fault driver for noneconomic damages, if the victim’s injury constitutes a threshold injury.</p> |

| VICTIM OUTCOME: PURE TORT LAW | VICTIM OUTCOME: CURRENT NO-FAULT LAW |
|--|--|
| <p>Gina will only be able to recover her expenses and damages from the at fault drunk driver. However, in light of the fact the drunk driver had no insurance, and is likely uncollectible, Gina will only be able to recover her expenses and damages if her parents had purchased large sums of <i>uninsured motorist coverage</i> from their own insurance company and, then, only to the extent of the coverage purchased.</p> | <p>Regardless of fault, Gina is entitled to lifetime benefits for all reasonably necessary medical and rehabilitation expenses, in-home attendant care, and other allowable expenses, in addition to three years of wage loss and domestic services. In addition, she can sue the at fault driver for noneconomic damages if her injury constitutes a “<i>threshold injury</i>.”</p> |

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III. REAL WORLD COMPARATIVE EXAMPLES (continued)

| ACCIDENT SCENARIO #4 | ACCIDENT DESCRIPTION |
|---|---|
|  | <p><i>Harriet</i> is driving her car with her daughter, <i>Isabella</i>, in the front seat, when she accidentally runs a red light at an intersection, striking another vehicle that entered the intersection on a green light.</p> |
| ACCIDENT SCENARIO #5 | ACCIDENT DESCRIPTION |
|  | <p><i>Jack</i> is a 17-year-old high school senior driving his father's car, when he falls asleep at the wheel, crosses the centerline, and collides head on with a car driven by <i>Karen</i> rendering her a quadriplegic.</p> |

| VICTIM OUTCOME: PURE TORT LAW | VICTIM OUTCOME: CURRENT NO-FAULT LAW |
|--|---|
| <p>Harriet will not be able to recover any of her expenses and damages, because she is the only at-fault driver and, therefore, has no tort remedy. In order for Isabella to recover her expenses and damages, she will be required to pursue her mother in tort, as her mother is the at fault driver. In any event, the amount Isabella will be able to recover will be determined by how much liability insurance her mother purchased.</p> | <p>Regardless of fault, Harriet and Isabella are entitled to lifetime benefits for all reasonably necessary medical and rehabilitation expenses, in-home attendant care, and other allowable expenses, in addition to three years of wage loss and domestic services. In addition, Isabella can also pursue a liability claim against her mother, Harriet, for noneconomic damages if Isabella's injury constitutes a "threshold injury."</p> |

| VICTIM OUTCOME: PURE TORT LAW | VICTIM OUTCOME: CURRENT NO-FAULT LAW |
|--|--|
| <p>Jack is not entitled to recover any of his expenses and damages, because he is the only at fault driver. Karen will only be able to recover her expenses and damages, if she can prove that Jack was negligent in causing the accident and, then, the amount she will be able to recover will largely be determined by the amount of liability insurance carried by Jack's father on the vehicle Jack was driving. It is unlikely, in light of Karen's catastrophic damages, that Jack's father carried enough liability insurance, thereby exposing both Jack and his father to personal financial liability for Karen's uncovered expenses. If the liability coverage available to Jack's father is inadequate to fully compensate Karen, and he is uncollectible for Karen's excess expenses, Karen may only be able to recover additional compensation if she had the foresight to purchase <i>underinsured motorist coverage</i> in a very large amount.</p> | <p>Regardless of fault, Jack and Karen are entitled to lifetime benefits for all reasonably necessary medical and rehabilitation expenses, in-home attendant care, and other allowable expenses, in addition to three years of wage loss and domestic services. In addition, Karen can sue Jack, and Jack's father as the vehicle owner, for noneconomic damages, because her injury clearly constitutes a "threshold injury."</p> |

IV. CONCLUDING THOUGHT

Although the tort liability system plays an indispensable role in protecting the rights of many persons who are seriously injured in motor vehicle accidents, the above examples make it clear that tort law, standing alone, cannot adequately serve this purpose. Rather, seriously injured accident victims are best served by an auto injury reparations law that is built upon two strong foundational pillars: (1) *a comprehensive no-fault first-party PIP benefit system that guarantees assured, adequate, prompt reimbursement for medical expenses and wage loss for all motor vehicle accident victims without regard to fault;* and (2) *a viable, tort liability system that allows innocent, seriously injured victims to hold irresponsible drivers accountable for unreimbursed expenses and diminished quality of life damages wrongfully suffered by the victim.* The Michigan Auto No-Fault Law has created such a balanced system that has served Michigan citizens extraordinarily well for nearly 50 years. Clearly, problems with affordability must be effectively and promptly addressed by the Michigan Legislature. However, the solution is not, as the old adage cautions, to "throw the baby out with the bath water." Such a simplistic, short-sighted solution will never adequately serve the needs of Michigan citizens and will certainly be doomed to failure.



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WHY MICHIGAN NO-FAULT?

Before auto no-fault, Michigan policymakers struggled with how best to care for seriously injured accident victims. Hospital bills piled up and injured parties went uncompensated for years while their cases wound their way through the courts. There had to be a better way.

More than 45 years ago, Governor William G. Milliken and the Michigan Legislature worked together to pass a law that dramatically revolutionized how we take care of people who sustain serious motor vehicular injury. That law was the Michigan Automobile No-Fault Insurance Act. No state had ever enacted such a bold plan of providing comprehensive medical care while protecting the legal rights of seriously injured accident victims. This unique concept blended venerable principles of the common law tort system with a new, comprehensive statutory reparations plan that would provide patients with lifetime medical care and broad-based rehabilitation therapies that are essential to rebuilding lives that have been shattered by catastrophic injury.

Over the following decades, the noble objectives of this innovative legislation were substantially achieved, and the Michigan Auto No-Fault Law soon became known nationally as a “model law.” Unfortunately, this remarkable law has recently come under intense attack in the Legislature and the Courts by special interests groups that believe it is no longer worth preserving. Michigan citizens, however, have consistently opposed those special interests. On two occasions, in 1992 and 1994, Michigan voters voiced their great support for the Michigan Auto No-Fault Law by defeating two ballot proposals that would have dramatically weekend its operation.

For further information regarding this issue, please contact the CPAN Legal Team at the contact information below:

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