

MOTORCYCLISTS AND THE MICHIGAN NO-FAULT LAW

(2nd Edition)

Important Questions and Answers®

By:

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About the Firm

The law firm of *Sinas, Dramis, Brake, Boughton & McIntyre, P.C.* was established in Lansing, Michigan in 1951. The firm was founded by two young lawyers, Thomas G. Sinas and Lee C. Dramis, who built on a close personal relationship to create a law firm that would become, over the next half century, one of the most respected in the State of Michigan. The firm, commonly referred to as *The Sinas Dramis Law Firm*, is best known for its excellent reputation representing plaintiffs in matters dealing with serious personal injury and wrongful death.

The law firm's competence in these areas of law is reflected by the fact that five of its attorneys (*George T. Sinas, Timothy J. Donovan, James F. Graves, Bryan J. Waldman and the now retired, Barry D. Boughton*) have been recognized in the national publication, "*The Best Lawyers in America*," in the field of plaintiffs personal injury litigation. Three members of the law firm (*George T. Sinas, Bryan J. Waldman and the late, Lee C. Dramis*) have served as *President of the Michigan Trial Lawyers Association*. In addition, two members of the law firm (*George T. Sinas and Timothy J. Donovan*) have served as *Chairperson of the State Bar Negligence Law Section*. Another member of the firm (*Bernard F. Finn*) has been recognized in "*The Best Lawyers in America*" in the field of family law. One former member of the law firm (*Donald L. Reisig*) served as *President of the State Bar of Michigan*.

About the Author



George T. Sinas is a senior shareholder in the law firm of *Sinas, Dramis, Brake, Boughton & McIntyre, P.C.*, Lansing, Michigan, commonly referred to as the *Sinas Dramis Law Firm*. He is engaged in the full-time practice of law, which he limits to the representation of seriously injured people. Mr. Sinas received his bachelor's degree from the University of Michigan and his law degree from Wayne State University.

Mr. Sinas has been recognized in the book, *"The Best Lawyers in America"* (1989-2008 editions) in the field of personal injury law. In 2003 he was recognized by Michigan Lawyers Weekly as one of Michigan's *"10 Lawyers of the Year."* Also in 2003, he received the *"Leo A. Farhat Outstanding Attorney Award"* from the Ingham County Bar Association. In 2005, he received the *"Professional Service Award"* from the Brain Injury Association of Michigan for his advocacy on behalf of persons suffering serious brain injury. Mr. Sinas has also been listed in the 2006 and 2007 editions of *Michigan Super Lawyers* as one of Michigan's *"Top 100"* attorneys.

Mr. Sinas has written two text books and numerous articles on the subject of the Michigan Automobile No-Fault Insurance Act. He is also an Adjunct Professor at the Michigan State University College of Law and serves as legal advisor to the *Coalition Protecting Auto No-Fault (CPAN)*, a broad based coalition of medical providers and consumer groups working together to preserve and protect the Michigan auto no-fault system. He is a Past President of the Michigan Association for Justice (formerly the Michigan Trial Lawyers Association) and a Past Chairperson of the Negligence Law Section, State Bar of Michigan.

Introduction

Michigan is only one of 14 states with an auto no-fault insurance system. The rules under such a system are complicated and often confusing. This is particularly so with regard to motorcycle owners, operators and their passengers. This pamphlet is intended to explain the basic operation of the Michigan No-Fault Law as it applies to motorcyclists and to answer some frequently asked questions. The information contained in this document, however, is not intended to be a substitute for competent case-specific legal advice. In all cases involving serious injury, a motorcyclist should consult with an attorney who is well versed regarding the operation of the Michigan No-Fault Act before making important decisions regarding legal rights and insurance benefits.

Question #1: Is the owner of a motorcycle registered in Michigan required to purchase Michigan auto no-fault insurance?

Answer #1: No. The Michigan No-Fault Law only requires the owners or registrants of “motor vehicles” required to be registered in the State of Michigan to purchase auto no-fault insurance coverage. Under the law, a motorcycle is not considered a “motor vehicle.” Therefore, motorcycle owners/registrants are not required to purchase Michigan no-fault auto insurance. However, under the law, the owner or registrant of a motorcycle is required to purchase traditional liability insurance for bodily injury, death or property damage [MCL 500.3103(1)]. This liability insurance is commonly referred to as “PLPD coverage.” Essentially, it provides liability coverage to the motorcyclist if the motorcyclist is at fault and causes bodily injury, death or property damage to another person. If the owner or registrant of a motorcycle does not purchase PLPD coverage, serious penalties can be imposed, including a misdemeanor conviction, fine and/or imprisonment. More importantly, the failure to purchase PLPD coverage as required by law will disqualify the motorcycle owner from receiving no-fault PIP insurance benefits that may be available under the Michigan No-Fault Law [MCL 500.3113(b)].

Question #2: If a person sustains injury operating or riding a motorcycle, can that person collect no-fault benefits under the Michigan Automobile No-Fault Insurance Law?

Answer #2: Yes, but only when the motorcyclist sustains bodily injury arising from the operation or use of a “motor vehicle” [MCL 500.3105(1)]. Therefore, if a motorcyclist is involved in a collision with a car, truck or other “motor vehicle” as defined under the Michigan No-Fault Law, the motorcyclist is entitled to recover full no-fault insurance benefits as those benefits are defined in the statute and summarized herein. It should also be noted that, depending on the specific facts of the case, actual physical contact between the motorcycle and the motor vehicle is not required, provided that the operation of the motor vehicle was a significant factor in the injury to the motorcyclist. However, if the motorcyclist sustains an injury as a result of a collision with another motorcyclist or some non-vehicular object or simply as a result of loss of control, the motorcyclist is not entitled to recover no-fault insurance benefits under the Michigan No-Fault Law. The law further provides that if the owner or registrant of the motorcycle fails to purchase the statutorily required PLPD coverage (referred to in Question #1) then, the motorcyclist will lose all rights to recover no-fault benefits under the Michigan Auto No-Fault Insurance Law [MCL 500.3113(b)].

Question #3: If no-fault insurance benefits are payable to an injured motorcycle operator or passenger, what specific benefits are payable?

Answer #3: If a motorcyclist (driver or passenger) sustains an injury as a result of an accident involving a “motor vehicle,” the motorcyclist is treated exactly the same as if he or she were operating an automobile – they are entitled to full no-fault personal insurance protection benefits. These benefits are commonly referred to as no-fault PIP benefits and they include (a) unlimited lifetime coverage for allowable expenses, which the statute defines as all reasonable charges for reasonably necessary products, services and accommodations for the injured person’s care, recovery or rehabilitation; (b) wage loss benefits for a three (3) year period calculated at 85% of gross income not to exceed the applicable monthly cap (currently \$4,713 per month); and (c) replacement service expenses for a three (3) year period not to exceed \$20 a day to reimburse the injured person for reasonably necessary domestic services that others were required to perform for the injured person, or his or her dependents [MCL 500.3107]. In cases involving death, dependents of the decedent would be entitled to recover survivor’s loss benefits for a three (3) year period, which consist of the loss of after tax income, the value of lost fringe benefits and replacement service expenses, the total of which cannot exceed the monthly cap applicable to work loss benefits [MCL 500.3108]. The no-fault PIP benefits payable under the Michigan No-Fault Act are the most generous of any no-fault state in the United States. Therefore, motorcyclists should be well informed about these benefits and take all reasonable steps necessary to protect their right to recover these important benefits. It should also be emphasized that if no-fault PIP benefits are payable to an injured motorcyclist, there are very strictly enforced time limitations which are applicable to these benefits. The first of these limitations is the “one year notice rule,” which requires that the injured person give statutory written notice to the no-fault PIP insurer within one year of the date of the accident specifying the detail required by the statute. The second time limitation is referred to as the “one year back rule” which provides that a lawsuit filed to recover unpaid PIP benefits can only enforce payment of expenses that were incurred within one year of the date the lawsuit was filed [MCL 500.3145]. Therefore, prompt legal action must be taken to enforce the right to recover unpaid PIP claims. More information regarding no-fault PIP benefits can be obtained by contacting the author of this pamphlet at the *Sinas Dramis Law Firm* and

requesting a copy of the brochure entitled, *"The Michigan No-Fault Automobile Insurance Law: Your Rights & Benefits."*

Question #4: If no-fault insurance benefits are payable to an injured motorcycle operator or passenger, what insurance company has the obligation to pay those benefits?

Answer #4: The Michigan No-Fault Law contains very specific priority rules which determine what auto insurance company is obligated to pay no-fault PIP benefits to an injured motorcyclist. These priority rules are found in § 3114(5) of the statute. That section states that an operator or a passenger of a motorcycle who sustains bodily injury arising out of an accident involving a motor vehicle, must claim no-fault PIP benefits from insurers in the following order of priority: (a) the insurer of the owner or registrant of the motor vehicle involved in the accident; (b) the insurer of the operator of the motor vehicle involved in the accident; (c) the auto no-fault insurer of the operator of the motorcycle involved in the accident; and (d) the auto no-fault insurer of the owner or registrant of the motorcycle involved in the accident. It is important to emphasize that these rules constitute an order of priority, which means that the claim must begin with the insurer that is in the first level of priority and only proceed downward to the next level of priority if there is no insurance at the immediately preceding level. A person who is injured while a passenger on a motorcycle and who is unable to recover benefits under any of the above referenced four levels of priority, will draw no-fault benefits from the passenger's household auto no-fault insurer [MCL 500.3114(1)] and if no benefits are recoverable at that level, then the passenger will draw benefits through the Michigan Assigned Claims Facility (ACF). The operator of the motorcycle can also seek no-fault PIP benefits from the Assigned Claims Facility if no benefits are available to the motorcycle operator under any of the four levels of priority referenced above.

Question #5: What happens if an injured motorcycle operator or passenger is entitled to no-fault PIP benefits and also has health insurance coverage?

Answer #5: The answer to this question is very complicated. Clearly, the no-fault insurer of the motor vehicle involved in the accident must pay the medical expenses of the injured person on a primary basis without regard to whether the injured person also has health insurance. If the injured motorcyclist is also covered under a health insurance policy, that health insurance policy may also be legally obligated to pay benefits unless it has "coordination of benefits" language that makes health insurance coverage secondary if no-fault PIP benefits are payable [MCL 500.3109a]. In those rare situations where an injured motorcyclist is required to collect no-fault PIP benefits from his or her auto no-fault insurer because the motor vehicle involved in the accident was uninsured, the injured person's auto no-fault insurance policy may, under certain circumstances, be coordinated with health insurance coverage, which would then make the health insurance coverage primary and the no-fault coverage available only to pay those medical expenses not paid by health insurance. As previously stated, this is a complex issue that will probably require a more complete legal analysis depending upon the specific facts of the case.

Question #6: Is there a special form of “motorcycle no-fault insurance” that a motorcycle owner can purchase?

Answer #6: Yes. This coverage is often referred to as motorcycle PIP coverage and is an optional coverage that the owner or registrant of a motorcycle can purchase if he or she so chooses. Section 3103(2) of the Michigan No-Fault Law requires insurance companies to make this coverage available to motorcycle owners or registrants, in increments of \$5,000 or more, “for the payment of first party medical benefits only” in situations where the owner or registrant of a motorcycle is injured in a motorcycle accident that does not involve a motor vehicle. The phrase “*first party medical benefits*” is actually not defined in the No-Fault Act. Presumably it refers to the standard no-fault PIP benefits defined in § 3107 and 3108 of the statute (see Question #3). However, the point is not absolutely clear. These motorcycle PIP benefits can be purchased on a primary or coordinated basis. In reality, very few motorcyclists ever buy these optional coverages.

Question #7: If a motorcycle operator or passenger sustains bodily injury caused by the fault of the other motor vehicle driver, does the injured person have the right to additional compensation?

Answer #7: Yes. The Michigan No-Fault Law creates two types of liability for motor vehicle drivers who negligently cause at fault accidents. The first type of liability imposed on the negligent driver is liability for noneconomic loss if the injured person sustains a so-called threshold injury, which, according to the statute, is one of three things: serious impairment of body function; permanent serious disfigurement; or death. Michigan law regarding the definition of “serious impairment of body function” and “permanent serious disfigurement” is complicated and is frequently the subject of reinterpretation by the Michigan appellate courts. Therefore, motorcyclists sustaining serious injury should consult with an attorney well versed in the Michigan No-Fault Law to determine if the injury is a threshold injury, thus entitling the motorcyclist to pursue a liability claim for noneconomic loss against the at fault driver [MCL 500.3135(1)]. The second type of liability imposed on the negligent driver is liability for excess economic loss suffered by the motorcyclist, which, in most cases, means loss of income that exceeds the wage loss benefits payable under the Michigan No-Fault Law. A threshold injury is not legally required in order to pursue a claim for excess economic loss [MCL 500.3135(3)]. In cases involving death, the estate of the motorcyclist can pursue a wrongful death claim against the at fault motor vehicle driver. Injured motorcyclists must be very careful in how they approach a potential liability claim because, in most situations, the insurer of the motor vehicle involved in the accident will be “wearing two hats.” In other words, the insurer will be responsible for payment of no-fault PIP benefits to the injured motorcyclist and will also be the insurer defending the motorcyclist’s liability claim. In these situations, the motorcyclist must exercise extreme caution in his or her dealings with the motor vehicle insurer. At a minimum, the insurer should assign separate adjusters to the two claims and maintain two separate claim files.

Question #8: Who is responsible for paying collision damage to a motorcycle?

Answer #8: If a motorcycle is physically damaged as a result of being struck by a car, truck or other motor vehicle as defined in the Michigan No-Fault Law and that motor vehicle is insured with Michigan no-fault insurance, the motorcycle owner will not be able to recover any compensation for collision damage to the motorcycle – not even so called “*mini-tort*” damages that are available to automobiles. However, if the motor vehicle causing the damage to the motorcycle did not carry the required Michigan no-fault insurance coverage, then the owner and/or operator of the uninsured motor vehicle is personally liable for the damage to the motorcycle [MCL 500.3135]. In situations where a motorcycle was “reasonably parked” at the time the collision damage was sustained, the motorcycle owner would be entitled to make a claim for “*property protection insurance benefits*” from the insurer of the motor vehicle causing the damage to the parked motorcycle. These property protection insurance benefits consist of the repair costs or replacement value of the motorcycle, less depreciation, plus the value of loss of use of the motorcycle [MCL 500.3121 and 3123].

Question #9: Can a Michigan resident who sustains injury operating or riding a motorcycle in another state recover no-fault insurance benefits?

Answer #9: Yes, as long as the motorcyclist was, at the time of the accident, a named insured under a Michigan auto no-fault insurance policy or was the spouse or resident relative of someone who was insured under a Michigan auto no-fault insurance policy. In that situation, the Michigan motorcyclist would recover no-fault PIP benefits directly from the motorcyclist's auto no-fault insurer. Presumably the injury must arise out of a "motor vehicle accident," as opposed to an accident solely involving motorcycles, although that point has not been specifically addressed by Michigan appellate courts. The issue of out of state accidents involving Michigan citizens is controlled by § 3111 of the Act.

Question #10: When purchasing auto no-fault insurance, what coverages should consumers select?

Answer #10: This is an important question for motorcyclists because, even though they will generally recover no-fault PIP benefits from the insurer of the motor vehicle who caused their injury, there are limited circumstances when no-fault PIP benefits will be paid to the motorcycle operator or passenger by their own auto no-fault insurer. Therefore, motorcyclists who own motor vehicles should be very careful when purchasing their auto no-fault insurance policy. It is the opinion of this author that all consumers purchasing auto no-fault insurance coverage should select the following options on their auto insurance policy: (1) uncoordinated medical and wage loss coverage; (2) residual liability insurance with limits not less than \$300,000; (3) uninsured motorist benefits coverage with limits not less than \$300,000; and (4) underinsured motorist benefits coverage with limits not less than \$300,000. In addition, motorcyclists should buy "*optional motorcycle PIP*" coverage under § 3103 of the Act (see Question #6) and should purchase this coverage on an uncoordinated basis. More information regarding these specific coverages can be obtained by contacting the author of this pamphlet at the *Sinas Dramis Law Firm* and requesting a copy of the brochure entitled, "*Auto No-Fault Insurance Coverages: Are You Adequately Protected???*".

Conclusion

As the above discussion indicates, the Michigan No-Fault Auto Insurance Law is a complicated statute with very significant implications for those who sustain injury as operators or passengers of motorcycles. Therefore, if the driver or passenger of a motorcycle sustains serious injury as a result of an accident involving a “motor vehicle” as defined in the Michigan No-Fault Law, the injured person should immediately do the following: (1) identify the appropriate no-fault insurer who is responsible for the payment of no-fault PIP benefits and take all necessary steps to preserve and protect the PIP benefit claim; and (2) seek the advice of an attorney who is very familiar with the Michigan No-Fault Automobile Insurance Law in order to determine if the injured motorcyclist has a valid tort liability claim against the at fault driver and to begin the appropriate liability investigation to preserve that claim.

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