

The A-B-C's of
Motor Vehicle Collisions
and
Personal Injury Claims
In Minnesota



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CHAPTER 1

Minnesota No -Fault Insurance Claims:

1. Minnesota is a No-Fault state. What does that mean?

In 1974 the Minnesota Legislature passed the Minnesota No-Fault Automobile Insurance Act, which went into effect on January 1, 1975.

This means every personal injury claim in the state of Minnesota has two parts:

- (1) No-Fault part; and
- (2) At-Fault part.

NOTE: If you are injured while driving or riding in a motor vehicle while you are on the job (i.e. in the course and scope of any employment), your claim has three parts!!! You have rights under the Minnesota Workers Compensation law in addition to your rights under the No Fault law and your rights to make a claim against the “At Fault” driver.

The No-Fault part of a Minnesota personal injury claim involves collecting benefits provided under your No-Fault insurance policy.

2. Do you have No-Fault insurance?

Under Minnesota law, No-Fault insurance coverage is mandatory and must be, by law, included in every automobile insurance policy.

Generally, a person injured in a motor vehicle collision, whether as a driver, passenger or pedestrian, has the right to No-Fault benefits. However, the law is somewhat complicated as to which insurance policy is required to provide the No Fault insurance coverage. The advice of an attorney may be necessary to resolve that issue.

A. Rights Under Your Own Car Insurance Policy: In the large majority of cases, the injured person will have the right to collect No Fault benefits from their

own car insurance policy. Accordingly, if you have car insurance (or live in the household of a relative who has car insurance), then you have No-Fault insurance coverage.

B. Rights Under the Car Insurance Policy on the Car in Which You Were Riding: Even if you don't have your own car insurance but are injured while riding in a car that does have insurance, you can collect No-Fault benefits from the insurance policy on the car in which you were riding.

C. Rights When Riding in a Bus/Taxi Cab: If you were injured while riding in a vehicle "used in the business of transporting persons or property" (i.e. a bus or taxi cab), you must seek No Fault benefits from the insurance covering that vehicle.

D. Right When Injured as a Pedestrian: Persons injured as a pedestrian or bicycle rider have the right to collect No Fault benefits from the insurance policy on the car that was involved in the accident and, if none, then from their own policy if they have one.

E. Rights If You Don't Have Insurance: Even if you didn't have car insurance and the car in which you were riding didn't have insurance, you still might be able to collect from the Minnesota Assigned Risk program. If you don't have car insurance and are driving illegally, then you may not have the right to collect No-Fault insurance benefits.

(You should consult with an attorney about how to apply for Assigned Risk coverage.)

3. What if you are riding as a passenger in someone else's car when you were was injured?

If you have car insurance of your own and were injured when riding as a passenger in somebody else's car, you are entitled to collect No-Fault benefits from the insurance policy on your own car, even though you were not in your own vehicle at the time of the accident.

If you do not have a car of your own and, as a result, don't have your own policy of car insurance but are injured while riding in someone else's car, you are entitled to

receive No-Fault benefits from the insurance policy on the car that you were riding in when you were injured.

4. What type of benefits can I get from my No-Fault Insurance Claim?

If you have been injured in a motor vehicle collision, you are entitled, under Minnesota law, to receive the following benefits:

- a. **Medical Expenses.** These benefits may include the expenses of doctors, hospitals, chiropractors, special nurses, physical therapy and prescriptions. It may also include: medical travel expenses prescribed by a doctor or chiropractor, braces, cervical collars, crutches, wheelchairs, and the cost of a health/exercise club.
- b. **Replacement Services.** These benefits may include: as prescribed by a doctor, the costs of cleaning help, snow removal, and the costs of other hired services which would have been performed by you if you were not injured.
- c. **Primary Homemaker Replacement Services (PHRS).** If you were, or would normally be, the “primary homemaker” of your family unit, you can collect the fair market value of the homemaker services that you would normally do, but cannot do because of your injuries. (A lawyer knowledgeable in handling Primary Homemaker Replacement Services claims can help you with making a PHRS claim.)
- d. **Wage/Income Losses.** These benefits also may include lost wages. If you are self-employed, you can collect the cost of replacement workers who are paid to fill in for you. You are entitled to collect 85% of your actual wage or salary up to a maximum of \$250/week, or more if you have purchased extra coverage.

5. How I start a claim for No-Fault benefits?

First, you should contact your insurance company immediately after you've been injured in a car accident. You should call your agent and ask for claim forms.

Secondly, you should complete the form immediately and submit it to your No-Fault insurance company promptly. (The assistance of an attorney in doing this

can be very valuable to avoid any statements in your application that may later be used against you.)

Thirdly, you should provide your insurance company with the information and evidence necessary to prove your entitlement to No-Fault benefits. (Here, the assistance of an attorney would also be valuable.)

6. How much can I collect?

A. Minimum Coverage: Under Minnesota law, every policy of No-Fault insurance must have a minimum of \$20,000.00 in coverage for medical/health care expenses and another \$20,000.00 for Non-Medical Benefits (wage loss and replacement services).

B. Additional coverage: You may also have additional coverage if you elected to buy additional coverage. Some companies offer coverage's above the minimums.

C. Stacking coverage: You may also have stacking coverage which allows you to collect No-Fault coverage where more than one vehicle is insured under the policy and you paid an extra premium amount for the stacking coverages.

(The assistance of a lawyer who is knowledgeable in No-Fault insurance matters can be of assistance to you in determining how much coverage you have under your No-Fault policy.)

7. How long can I continue to collect No-Fault benefits?

You are entitled to receive No-Fault benefits for as long as it is medically reasonable for you to incur these expenses or losses.

Your rights to benefits may continue for the rest of your life or until the full amount of your coverage limits have been exhausted or until there has been a one year "lapse" in treatment or disability.

If there is a one year lapse in your disability, the coverage may be lost. For that reason, it is important that you continue to see your health care providers on a regular basis and according to their recommendations. ***You should see a doctor for your injuries at least once a year. If you skip treatments for more than a***

year, the insurance company may attempt to deny No-Fault benefits for the rest of your life!

Of course your claim must be supported by your health care providers in order for you to collect.

8. What if the insurance company doesn't pay or stops paying?

If you have a valid claim and the insurance company doesn't pay or stops paying, you have the right to take your claim to arbitration to force the insurance company to pay if the claim is under \$10,000. If the claim is over \$10,000 you must file suit in court to collect the benefits to which you are entitled. The assistance of an attorney is not absolutely necessary but can be very helpful in prosecuting your claim in an arbitration hearing and making certain that you are claiming all of the benefits to which you are entitled under the law.

9. Do I need an attorney to collect No-Fault benefits?

Not necessarily, but having an attorney can be very helpful. You can collect No-Fault benefits without the help of an attorney.

However, the services of an attorney can help you to collect and to make sure that the benefits paid are correct. If you have an injury that is such you may have a claim against the at-fault driver, the attorney handling that claim can assist you with your No-Fault claim. There are many claims that can be made for No-Fault benefits that are often not obvious to a non-lawyer.

The Schmidt Law Firm has been able to collect many types of No-Fault claims that many other lawyers and law firms, even those specializing in injury claims, often overlook.

An attorney can also help you to determine whether your claim is one that permits you to bring a claim against the At-Fault driver.

In the event of an accident, you should immediately contact your own insurance company and report the accident. You should ask your agent for No-Fault claim forms. Your attorney can help you to fill out those forms and to get payments started sooner.

10. Should you sign a release to collect No-Fault benefits?

No. It is not necessary for you to sign a release in order to get No-Fault benefits. In fact, you absolutely should not sign a release without consulting an attorney.

11. If I collect No-Fault benefits, can I still make a claim against the other driver?

Yes. You can collect these valuable No-Fault benefits from your own insurance company and still bring a claim against the At-Fault driver and his/her insurance company, for damages you have sustained over and above those which you collect under your No-Fault coverage. The damages include medical expenses and wage/salary losses not paid by No-Fault. It also includes damages for your pain and suffering, disability, and loss of enjoyment of life. The spouse of the injured person may also collect damages for the loss of the services of the injured person. For more information, see Chapter 2 which provides more information regarding At Fault claims.

12. Do you have to prove that someone else was at fault to collect No- Fault benefits?

Absolutely not. That's why it is called "No-Fault" insurance. You can collect No-Fault benefits even if you were at fault OR if no one was at fault (i.e. hitting a deer in the road).

13. What is No-Fault arbitration and how does it work?

Minnesota No-Fault disputes are typically decided by a single arbitrator who is selected from a panel appointed by the Minnesota Supreme Court. Both sides; the injured party and the No-Fault insurance company, present their evidence and the arbitrator then decides the case. The arbitrator's decision is then made in the form of an "award."

In most cases, the No Fault insurance company will voluntarily pay the award. However, in some cases, the insurance company will appeal the award to District Court.

14. Will filing a No-Fault claim increase my insurance premiums?

The filing and pursuit of a No-Fault claim should not affect your future insurance premiums. The Schmidt Law Firm has handled thousands of No-Fault claims and it has not been a problem, it's the At-Fault drivers insurance rates which have been affected.

CHAPTER 2

Minnesota “At-Fault” Claims:

1. What does my “At-Fault” claim involve?

Simply stated your **At-Fault claim is the claim you have against the another driver that was at fault in causing the collision that resulted in your injuries.**

2. Do you automatically have an At-Fault claim?

No. You automatically have a Minnesota No-Fault claim if you have been injured.

However, you do not have an At-Fault claim unless all of the following is true:

1. Someone other than you was at fault in causing your injuries.
2. The at-fault party is more at fault than you.
3. You meet one of the “threshold requirements” under Minnesota law which entitles you to bring an At-Fault claim.

The threshold requirements are as follows:

1. Medical Expenses in excess of \$4,000.00.
2. Permanent Disfigurement.
3. Permanent Disability.
4. Death.
5. Disability for 60 days.

3. How is my “At-Fault” claim different from my “No-Fault” claim?

Your At-Fault claim differs from your No-Fault claim in the following respects:

1. The At-Fault claim is brought against the other driver, whereas the No-Fault claim is brought against your own company.
2. You must be able to prove the fault of the other driver in your At-Fault claim, whereas no proof of fault is required in your No-Fault claim.
3. The types of benefits you can collect in your At-Fault claim are totally different from those that you can collect in your No-Fault claim. (For more details in this regard please read the text below.)
4. If you cannot settle your At-Fault claim, your only remedy is to file a lawsuit in District Court. This is different from your No-Fault claim where you have the option of going to No-Fault Arbitration which is faster, less expensive and easier.

4. How do you prove fault in your At-Fault claim?

The injured party must be able to bring forth evidence to prove the fault of the at-fault party, both in the settlement phase and if the case cannot be settled in court in front of the judge and jury.

Proof of fault can be by proof that the at fault driver violated the Minnesota traffic laws. This can be by running a stop sign, exceeding the speed limit, or crossing the center line, or some other violation of Minnesota traffic laws. Violation of a traffic law is called a statutory violation and is considered evidence of fault.

Proof of fault can also be by proof of common law. This can be by proof that the at-fault driver “failed to maintain a proper lookout” or “failed to maintain control” of the vehicle.

In court, the injured party has the burden of proof, meaning the proof must be by a “preponderance of the evidence” (i.e. it was “more likely than not” that the at-fault party was actually “at-fault.”)

Proof of fault can be established by the testimony of eye witnesses and “after the fact” witnesses such as accident re-constructionists (experts who are called to testify as to how the accident happened based on skid-marks, damage to the vehicles, and similar evidence.

It is important to consult with an attorney as soon after the accident as possible so that your attorney can collect and save the evidence that will be necessary to prove the fault of the At Fault driver in settlement negotiations and at trial, if the case cannot be settled without trial.

5. Who is the At-Fault claim against?

The At-Fault claim is technically against the at-fault driver who caused the car accident. However, the claim is really against the at-fault driver’s insurance company. Minnesota law does not allow the claim to be made directly against the insurance company.

6. What is “comparative fault” and how does it affect my At-Fault claim?

Minnesota is a comparative negligence state, which means the injured person’s fault will be compared against the fault of the party that is primarily at fault. The percentage of fault of the injured party will reduce the amount of money damages that can be collected.

For example, if the jury decides that the at-fault party was 80% at fault and the injured party 20% at fault and the reasonable amount of the damages was \$100,000.00, the judge will reduce the amount that can be collected by the comparative fault of 20%. The final result is that the injured party would collect \$80,000.00 instead of the full \$100,000.00.

7. What type of benefits are you entitled to collect in your At-Fault case?

If you've been hurt in an automobile accident, you have the right under Minnesota law to collect money damages from the at-fault party.

First of all, you must be able to prove the “At-Fault” party was actually at fault. Further, any amount of fault on your own part will reduce the amount that you

can collect. (See the section on Comparative Fault – Chapter 2, No. 6.)

Minnesota law allows a person who is injured to collect both compensatory damages and punitive damages.

- a. **Compensatory damages** compensate a person for actual losses. They include the following:
 1. Past and Future medical expenses not paid by No-Fault.
 2. Past and Future loss of earnings and wages resulting from the injury.
 3. Past and Future disability, disfigurement and emotional distress.
- b. **Punitive Damages** are damages that are intended to punish the at-fault party for conduct that demonstrates a deliberate disregard for the rights or safety of others. The term “deliberate disregard” has been defined to mean, the at-fault driver had either “known about facts or intentionally ignored facts that created a high probability of injury...or deliberately acted with conscious or intentional disregard or with indifference to the high probability of injury to the rights or safety of others.” The best example of a case where punitive damages might be allowed by the court is that of a drunk driver who caused a car accident resulting in personal injury.

8. What amount of money can I collect in my At-Fault claim?

Unlike your No-Fault claim, there is no limit to the amount you can collect in your At-Fault claim. However, under exceptional circumstances, the Judge can reduce the amount if the Judge determines that the jury verdict was excessive.

9. How do I go about trying to settle my At-Fault claim?

In order to get a fair settlement of your At-Fault claim, you need to be able to prove both fault and damages. (See the section above about how to prove fault.)

Proving fault isn't enough. You must prove the nature and extent of your "damages", or your losses. In doing so, you must prove at least one of the following:

1. That you have met one of the "tort thresholds".
2. That you have medical bills in excess of those paid by the No-Fault insurance.
3. That you have wage and earning losses in excess of those paid by the No-Fault insurance.
4. That you have permanent injury or disfigurement.

The insurance company for the at-fault driver will typically require much supporting documentation, including copies of the medical bills, payroll records and tax returns to prove wage and earning losses, narrative medical reports from your doctors confirming the nature and extent of your permanent injury or disfigurement.

The assistance of a lawyer is usually very important in collecting the necessary documentation and making a demand for settlement that will be respected by the insurance company so that a fair settlement results. Further, the assistance of an experienced personal injury attorney can help you to determine how much is fair.

10. What are your rights if the At-Fault party's insurance company either denies the claim or doesn't offer a reasonable settlement?

If you cannot settle with the insurance company for a reasonable amount, your remedy is to "file suit". That means suing the at-fault party and taking them to court.

The law requires all car accident claims must go to mediation or some other form of "alternative dispute resolution" (ADR). A high percentage of personal injury claims resulting from car accidents or other motor vehicle collision are settled at mediation.

If your case cannot be settled through mediation (or other form of ADR), then the last option is court or a jury trial. Even if your case did not settle at mediation, the option of settlement before trial, or even during trial, remains available.

11. How is the value of a personal injury case determined?

The “fair market value” of a personal injury case is determined by what juries do in similar cases. Insurance companies know that if a settlement cannot be reached, the case will be decided by a jury and their estimate of what an average jury will award in similar cases is what they use to determine how much to offer in settlement.

Just as the value of your home is decided by looking at similar sales of similar houses in similar neighborhoods, the “fair market value” of personal injury cases is decided by looking at jury decisions in similar cases. An experienced personal injury lawyer keeps track of what juries are doing in similar cases and uses that knowledge to determine the “fair market value” of any personal injury claim.

12. How much is my case worth?

The value of a personal injury case depends on many factors.

First, the degree of fault of the responsible party must be considered. The more fault, the better the case.

Secondly, the amount of fault of the injured person must be considered. (See the section regarding comparative fault – Chapter 2, No. 6.)

Thirdly, the severity of the injury and pain, amount of permanent disability, amount of the medical bills, lost wages, and other items of damages must be considered.

Finally, the financial ability of the at-fault party to pay must be considered. In most cases, this is determined by the amount of insurance coverage. For example, it is very difficult to get a \$100,000 settlement from a party with only \$30,000 of insurance.

However, in cases in which the injury claim has a value above the amount of the insurance coverage of the At Fault driver, your “Underinsured Motorist Coverage”

(UIM coverage) will provide payment of that part of your claim that is in excess of the At Fault driver's insurance coverage. NOTE: The assistance of an attorney who is experienced in automobile insurance matters is very important to preserve your UIM claim. If the settlement against the At Fault driver is not done properly, you can lose your rights to collect UIM benefits.



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