The **Complete** Legal Guide to

Michigan Motorcycle Accident Compensation

VOL. 1

Everything You Need to Know About Motorcycle Injury Compensation & Motorcycle Accident Claims

877-BIKER-LAW

by Jason Waechter
THE Motorcycle Lawyer℠

IMPORTANT NOTICE:

Don’t be naive and get taken advantage of by the insurance company!

I’ve received many calls from victims of motorcycle injury accidents who’ve said:

“I wish I’d called you first. The insurance adjuster said I did not have to have a lawyer and they promised to make me a fair offer. The adjuster was nice. They had me give a recorded statement, sign papers to get my medical record. Then, I waited. Then they needed more information, and I waited some more. After months of my begging them, they finally gave me a low-ball offer. I hope I didn’t hurt my case.”

Well, sometimes this does hurt your case.

1. Don’t ever talk to the negligent driver’s insurance company, let alone give a recorded statement.

2. Don’t sign anything unless a lawyer reviews it first. Signing the insurance company’s blank ‘Records Authorization’ allows them to potentially get all your life-long medical records from every source, your employment files and wage information, your tax records, and run credit reports on you.

3. Call a specializing, experienced lawyer immediately.

Jason A. Waechter

Jason A. Waechter
THE Motorcycle Lawyersm

Attorney Jason A. Waechter is a Michigan attorney specializing in motorcycle injury and wrongful death litigation for over 25 years and has handled over 1,000 motorcycle cases. Jason literally, “wrote the book” – he authored *Litigating Motorcycle Injury & Wrongful Death Cases*, a book for personal injury attorneys.

Some honors include:

Giving Back to the Motorcycle Community: His firm’s accident prevention campaign includes billboards and bumper stickers reminding other drivers to keep a look-out and share the road. His sponsored **Bystander Assistance Class** has patched over 2,500 motorcyclists, teaching them basic first aid and accident scene management.

Member: American Bikers Aiming Toward Education (ABATE), American Motorcycle Association (AMA), UNIDO

Our Motorcycle Results

$2,000,000 Verdict
Road construction negligence

$2,000,000 Settlement
Road construction defect

$1,500,000 Settlement
Broken leg corporate vehicle

$1,400,000 Settlement
Elderly driver turning left

$1,250,000 Settlement
Disputed liability

$1,200,000 Arbitration
Severe injury to internal organs

$1,000,000 Settlement
Motorcycle hit by semi-truck

$975,000 Settlement
Motorcycle accident

There is never a fee, unless we collect for you.

For free advice and case evaluation after a crash, or for possible representation,

Call Attorney Jason Waechter!

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I. Introduction

We took all of our eBooks about Michigan motorcycle law and split them into two compilations. One featuring claims and lawsuits a motorcyclist may have after an accident for money damages. The other compiled book is about insurance — explaining it, what's recommended, how motorcyclists get shafted, and more.

II. Table of Contents

3 Claims after a Michigan Motorcycle Accident

After a typical motorcycle accident where a negligent car driver hits a Michigan motorcyclist, generally there are three possible claims available—a No-Fault Claim, a Collision Claim and an Injury Claim.

I. THE NO-FAULT CLAIM

The No-Fault Claim is also referred to as the PIP (Personal Injury Protection or Personal Protection Insurance) or First Party Claim. Those three terms mean the same thing.

No-Fault Benefits are payable to anyone who suffers an injury “arising out” of the ownership, operation, maintenance or use of a “motor vehicle” as a motor vehicle”. For our purposes, just ask the question, “Was a ‘motor vehicle’ involved in the crash?”

A ‘motor vehicle’ basically means a car, truck or van. A motorcycle is not a motor vehicle under our No-Fault Law. There are many crashes that do not involve a ‘motor vehicle.’ If a biker hits a pothole, a dog, a deer, loose gravel, goes wide, or is hit by another motorcycle, there is no ‘motor vehicle’ involved. In those cases, no No-Fault benefits will be paid.

Even if the accident was your fault you may be entitled to No-Fault benefits. That’s why we call our vehicle insurance system “No-Fault.” We do not have to figure out or prove who was at-fault in an accident to obtain payment for certain damages.

WHAT ARE THE NO-FAULT BENEFITS?

When No-Fault benefits are payable, they include:

1. Medical Bills: Allowable medical expenses up to the amount of PIP medical coverage chosen by the insured owner and/or driver of the No-Fault insurance company responsible to pay your No-Fault benefits. To put it more simply, you figure out which insurance company is responsible to pay your No-Fault benefits and the amount you have for medical bill payment is the amount the insured owner or driver chose for his/her PIP Medical coverage.

Again, coverage is first that of the ‘motor vehicle’ involved in the crash. If none, no-fault coverage comes from the motorcyclist’s own car/truck insurance. For any medical expense to be allowable it has to be:

a. Reasonably necessary for the victim’s care, recovery or rehabilitation;
b. Reasonable in amount; and
c. Actually incurred (usually meaning services already provided*).

Attendant care is part of allowable medical expenses. This benefit pays for nursing-type care provided by an individual or company paid by the hour to care for the patient. We have had family members paid $240 or more per day for this caregiving. Effective July 1, 2021, the law will restrict Attendant Care provided by family and/or friends to 56 hours per week. This is drastically different from 168 hours per week available under the old law. If Attendant Care is required for more than 56 hours per week, the insurance company may require that the excess must be provided by a professional facility or other professional caregiver or it does not have to be paid.

2. **Wage Loss** is the second potential No-Fault PIP benefit. A person must have had a job or a legitimate expectation of employment. 85% of your gross lost wages are payable per month and there is monthly maximum, presently of about $5,800. No-Fault wage loss can be paid for up to three years.

The typical proof needed for an insurance adjuster to pay wage loss is a doctor's disability slip saying you are restricted from work because of the injuries or impairments from the crash and documentation from your employer proving you had a job and your rate of pay before the crash. Pay stubs and payroll printouts from your employer's human resources department are proof of how much you made.

3. **Medical Mileage:** Expenses for travel to and from medical appointment and for medical purposes. This can be mileage reimbursement if you or a family member drove or the payment of a driving service.

4. **Replacement Services:** Payment of replacement services of up to $20.00 per day is the fourth No-Fault benefit. Replacement services is just a fancy phrase for household chores. They are payable only if the injured motorcyclist did those chores before the crash but he or she cannot do them now because of the injuries from the crash. As an example, if the injured person only cut the grass and took out the trash before the accident, those are the only two chores that are payable. The other requirement is that someone else (a family member, friend or service) did those chores and payment was promised.

II. THE INJURY CLAIM

The claim against the negligent driver, owner, or other entity responsible for the accident seeking compensation for pain and suffering, disfigurement, excess wage loss, medical bills not covered by no-fault, and other applicable damages is called the injury claim, negligence claim, or the Third-Party claim.

To recover or 'win' an injury case, you must prove that the other driver was negligent, that you suffered a 'threshold level' injury, that the injury was caused by the negligence of the other driver, and that you suffered damages. Negligence is doing something unreasonable or failing to do something that was reasonable. Violating a traffic law such as speeding or failing to yield the right-of-way, may be considered negligent.

The ‘threshold level’ injury requirement can be met by having a permanent serious disfigurement, a death, or a ‘serious impairment of body function.’ Most cases full under the ‘serious impairment’ category.

To prove ‘serious impairment’, you basically have to show:

a. The injury/impairment is objectively manifested in that it is “observable or perceivable” from actual symptoms or conditions;
b. The injury/impairment is of an important body function, which is “a body function of great value, significance or consequence to the injured person;” AND
c. The injury/impairment affects the injured person’s general ability to lead his or her normal life in that it “has had an influence on some of the person’s capacity to live in his or her normal manner of living.”

The last important legal concept for this section is called the “Fifty-Percent Rule.” The injured victim cannot be more than 50% negligent for causing the crash. If the injured person was more than 50% negligence then he or she cannot obtain any non-economic damages (pain and suffering, disfigurement, loss of enjoyment of life, or emotional loss). Excess economic damages (excess wage loss and medical bills not paid by No-Fault) may still be recovered by the percentage of fault/negligence of the other driver.

III. THE COLLISION CLAIM

The claim to fix or pay the replacement value of your motorcycle less the deductible you chose is called the Collision Claim. You are not required to purchase collision coverage. It is not automatically included as part of your insurance policy. You must choose this coverage.

You cannot sue the insured at-fault driver for the damage to your motorcycle, not even the deductible. Therefore, when you choose the amount of your deductible, assume you will never get it back after a loss. There are three exceptions where you can have the negligent driver (or his insurance company) pay for the damage to your motorcycle. Those exceptions include:

a. the damage occurs when your motorcycle is reasonably parked;
b. a negligent motorcyclist caused the damage; and
c. the negligent driver was uninsured.

In these three situations, the law allows you to pursue a claim for your motorcycle’s full damage.

How Does a Motorcycle Wrongful Death Case Work?

When a victim dies because of an accident involving a vehicle, both the Michigan No-Fault Act and the Michigan Wrongful Death Act apply.

Ultimately an Estate must be opened, and a Personal Representative must be appointed by the Court. The Personal Representative stands in the shoes of the victim's estate and can bring a lawsuit against all parties who are potentially responsible for the death. Any money obtained in a lawsuit becomes proceeds of the estate and is distributed to those who qualify to receive it under the law. The Court must authorize the settlement and the distribution of the assets from a death case.

APPOINTMENT OF A PERSONAL REPRESENTATIVE

If there is a Will, the deceased probably named someone as his or her Personal Representative. That person would probably be appointed by the Probate Court to act as Personal Representative. If there is no Will, the Court will appoint a Personal Representative according to statutory requirements.

The Personal Representative of the deceased's Estate has the power to hire a personal injury attorney and make decisions on behalf of the Estate. We commonly appoint co-personal representatives if there is any dispute or worries within the family.

DAMAGES AVAILABLE IN A DEATH CASE

The major damages recoverable in a Wrongful Death action include:

a. pain and suffering that the deceased suffered before her death;

b. future wage loss; and

c. loss of society and companionship.

First-party (PIP) benefits are also available when there is an accident-related death involving a ‘motor vehicle’. These benefits are known as Survivor Loss Benefits.

WHO HAS A RIGHT TO BE COMPENSATED UNDER THE WRONGFUL DEATH LAW?

Those persons entitled to recover damages in wrongful death actions are described by statute, MCLA 600.2922(3), but its provisions are broad and are subject to judicial interpretation.

The persons who may be entitled to damages under the Wrongful Death Act are limited to any of the following who suffer damages and survive the deceased:

a. The deceased’s spouse, children (this includes adopted children), descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would have passed under the probate laws and the laws of the State of Michigan.

b. The children of the deceased’s spouse (this would include decedent’s stepchildren).

c. Persons named under the will/trust of the deceased, if not violating Michigan law.

Other persons with special standing or relationship with the deceased may be entitled to compensation. The above list should not be considered as all inclusive.

TRIPLE Your Injury Compensation after a Motorcycle Accident

To maximize your case after a Michigan motorcycle accident:

1. **Activate a Professional Investigation on Your Behalf**
   Time is of the essence. The faster a professional investigates the accident on your behalf, the better case you will have. This applies to securing witness statements, obtaining video footage, and photographing your injuries, the scene, the roadway and the vehicles involved.

   Insurance companies often dispatch their investigators as soon as their insured reports the accident, which is usually within 24 hours. Their investigator will try to build a case against you.

2. **Get Medical Attention Immediately**
   It is key to complain of everything that is hurting from head to toe. We have seen adjustors attempt to deny payment for medical treatment. For example, when someone has an acute injury, say a broken ankle, it is often not until the ankle 'settles down' weeks later that they really start to feel the low back strain.

   For someone to be compensated because of an injury, those injuries must be caused by the vehicle accident. Therefore, injuries complained of on the day of the crash or even the week of the crash, are easier to relate back to the accident.

3. **Get Referrals to Medical Specialists**
   It is best to be evaluated by medical specialists and receive the needed treatment as close to the date of the crash as is reasonably possible and medically necessary. If your primary doctor refers you to a specialist for testing (MRI) or prescribes physical therapy, do not delay. Make the appointments to get the testing and the treatment.

4. **Take Lots of Photos!**
   Take photos of everything you have control over. Photograph your injuries if visible, healing scars, medical devices you use (sling, cane, walker, shower seat, brace, etc.), the damage to the vehicles, the area of the accident, road defects before they are fixed, the accident scene, placement of where the vehicles came to rest, and anything else that will 'tell the story,' show who was responsible for the crash and the extent of your injuries.

   Take photographs of all the durable medical equipment that you required. Some examples include shower seat, raised toilet seat, walker, all your pill bottles, home hospital bed, recliner chair you had to sleep in, cane, sling, casts, braces (when there is a great deal of swelling, they often will put someone's lower leg and a plastic boot with Velcro straps). Again, photographs tell a story of everything you went through.

5. **Show That You Are a 'Safe & Legal Motorcyclist'**

Many laypeople have a bias toward motorcyclists. They think everyone drives like the speeding sport bike rider they saw one time, who was weaving in and out of traffic on the highway. I want to show that my motorcycle clients are safe, legal and philanthropic riders. Make a list of facts that apply to you that we (your lawyer) can bring out.

Things like:

- Do you have a motorcycle endorsement?
- What safety gear were your wearing?
- Were you wearing a helmet?
- Did you have proper registration and insurance?
- Do you have any other accidents or tickets on a motorcycle?
- Do you belong to any motorcycle groups that help people (charity involvement & activities)?
- Have any fellow motorcyclists ever allowed their loved ones to ride with you?

6. **Show That You Are an 'Experienced Motorcyclist'**

I want to show my clients to be experienced riders. I want to know the following about my clients:

- How long have you been riding motorcycles?
- Have your ridden dirt bikes as a kid?
- If so, I may be able to say, "So basically, you have been riding your entire life?
- How long have you had a motorcycle endorsement?
- Ever take any kind of motorcycle safety or riding class?
- Ever act as a Road Captain?

7. **How to Defeat the Bias: "Motorcycles are Hard to See"**

Show that you were very visible and easy to see. To combat the myth and argument they will likely attempt: "Motorcycles are hard to see; I did not see the motorcycle." You want to show you were easy to see. I investigate the facts listed below and point to the ones that help us.

To illustrate this, I have developed this line of questioning during my client's deposition:

- What is the light configuration in the front of your motorcycle?
- How many white headlights were there on your bike?
- What are their sizes?
- They are always on, correct? Daylight and at night, correct?
- Any running lights on your motorcycle?
- What color and size are those running lights?

- Turn signals? Reflective material? Lit at the time of the crash?
- Any reflectors on the front fender?
- Any other front lights or reflectors?
- Any LED lights?
- What was the color of your motorcycle?
- Any chrome on your bike? Where?
- What was the color of what you were wearing?
- Anything reflective?

Extra Sauce: I want to be able to argue that "The car driver not only should have seen the motorcycle, but he also should have heard it."

- Tell me about the exhaust system on your motorcycle?
- Factory or aftermarket exhaust system? Screaming Eagle?
- Have you ever set off a car's alarm system with the sound of your motorcycle?
- Ever get pulled over or get a ticket because of your exhaust system?

8. Pain & Treatment Diary

Sometimes it can be beneficial for the victim of an injury accident to keep a Pain & Treatment Diary. This kind of diary is from the injured person's point of view and succinctly highlights the care required, what life was like with the injuries sustained, medical equipment used, treatment rendered and the physical therapy experience.

There is a possibility that a person's diary could be discoverable in a lawsuit, meaning, it could have to be turned over to the other side. There are often private entries or things the defense could try to use against you. To thwart this, I have my client write on the top of the first page: ***"For my attorney—Privileged Communication."*** Now it is part of the attorney-client privilege and is not discoverable. I always learn something helpful to the case when reading my client's Pain & Treatment Diary.

9. Gaps in Treatment

Defense attorneys love to point out gaps in treatment. A gap in treatment is when the plaintiff has treated with doctors for his or her injuries for, say, a month, but stops for a period of time or just stops treating all together. The defense attorney often tries to argue, "He must not have been injured as bad as he claims" or "Plaintiff must be all better; otherwise, he would be going to the doctor."

The truth is that what the defense attempts to sell is usually not the case. In many of my cases, the reason my client stopped going to the doctors was because the doctors told him he was as good as he was going to get and would just have to live with it, or because there was no source of payment for the treatment. If you start to have a gap in your treatment for two months, I recommend talking about this to your attorney.

5
Things
You Need
to
Know

5 Things You Need to Know after a Michigan Motorcycle Accident

1. **No-Fault Benefits:** A motorcyclist is only entitled to no-fault benefits when there is a 'motor vehicle' 'involved' in the crash. 'Motor vehicle' basically means a car, truck, or van, NOT a motorcycle. 'Involved' does not require contact between the motor vehicle and the motorcycle. It is critical that you immediately obtain evidence of 'involvement' with a motor vehicle. Without proof of motor vehicle involvement, you could be denied no-fault benefits and be personally liable for all medical bills.

2. **Hit-&-Run and Uninsured Drivers:** If the at-fault driver is unknown—for example in a hit-and-run accident-- the motorcyclist may still be entitled to no-fault benefits and may still be able to collect compensation for his/her pain and suffering. As to pain and suffering damages for cases where the other driver is unknown, a special kind of insurance must be on the motorcycle. If the motorcyclist opted to have Uninsured Motorist Coverage, the injury claim he/she would have had against the negligent driver can be made with his/her own motorcycle insurance policy. I recommend having at least $250,000, but the more the better, because it potentially pays you for your injury.

3. **Damage to Your Motorcycle:** A motorcyclist typically cannot make the at-fault driver pay for the damage to his/her bike—not even the deductible. There are three exceptions:
   1) if the motorcycle is reasonably parked when hit;
   2) if the at-fault driver is uninsured; and
   3) if the damage was caused by a negligent motorcyclist.

4. **PIP Medical:** To obtain PIP medical coverage, we first look to the insurance company of the motor vehicle involved in the motorcycle accident as the insurance company responsible to pay the no-fault benefits. This is usually the at-fault car driver's carrier. If the driver of the motor vehicle involved has insurance, the motorcyclist is at the mercy of what that car driver chose for his/her PIP Medical Coverage. If he/she chose only $50,000 of PIP Medical Coverage, that is all the motorcyclist has available to pay for medical bills related to the accident.

If your medical expenses are greater than the amount of PIP Medical Coverage chosen by the at-fault driver, there may be other ways of payment.

5. There are time limits:

a. There is a time limit to file a no-fault claim. Application must be filed with the proper insurance company within one year of the crash.

b. There is a time limit to give special legal notices in certain kinds of cases (bus, police, road defect, dram shop cases, etc.) For a bus, this could be few as 60 days. For a road defect case, it could be 120 days or less depending upon what government entity is responsible for maintaining the road. Dram shop cases are those against a bar for overserving a negligent drunk driver who caused the crash. In dram shop cases, there is a 120-day notice required from the date you hire an attorney.

c. There is a time limit to file a pain and suffering case which could include unpaid medical bills from the no-fault claim. Typically, this kind of lawsuit must be filed within three years of the date of the crash; and

d. There is a time limit to submit wage loss, medical bills and other no-fault benefit requests. Requests to pay medical bills, wage loss, and other no-fault benefits must be submitted within one year from the date the expense was incurred.

   Further, if any benefit or bill remains unpaid, a lawsuit must be filed within one year from the treatment date related to the medical bill or benefit. If a lawsuit is not timely filed, the insurance company does not have to pay it.

Motorcycle Road Defect Cases

MOTORCYCE ROAD DEFECT CASES INVOLVING INJURY

Sometimes a pothole, uneven cement, or negligent construction work can cause a motorcycle to go down. We lawyers call these crashes “Road Defect” cases.

If the defect was caused by a road construction company, a negligence case can be brought against the company and its sub-contractors who may be held liable for damages. If the defect was in the road itself, a county or state responsible for maintaining the road may be liable for damages. A government entity may be granted immunity from being sued, but it all depends on the facts of the accident.

Proper ‘Notice’ is necessary. A ‘Notice’ must be sent to the government entity responsible for maintaining the road. This is just a letter, but it must have a great deal of specific information and must be sent within a certain time period.

The notice time limit may be 60 days or 120 days depending upon whether the defect is on a city, county or state road. Therefore, time is of the essence for acting on your potential claim. If proper notice is not given within the specific notice timeframe, a case may be thrown out of court with no recovery for the victim.

Take MANY photos: One of the most important things to do if you are involved in a road defect accident is to document the scene and the defect. We recommend immediately taking many pictures of the area. Take 50 pictures! Photograph everything—the defect close up, five feet away, ten feet away, from each point of view, a series of photos showing your path of travel moving the camera forward ten feet at a time. Documenting the signs in the area of a road construction project case can be important. The bottom line is to take tons of photographs of everything.

No-Fault Claims & Road Defect cases: In motorcycle road defect cases, typically there is no “motor vehicle” involved in the crash, therefore, no-fault benefits will not be paid. However, all damages may be recovered from the entity responsible for the roadway defect. This could be Michigan Department of Transportation or MDOT/the State of Michigan, a county, or a construction company that did or was in the process of doing work on the roadway.

Time Limit: The statute of limitations or amount of time you have to file a road defect case is two years. Remember, the Notice must be done within 60 or 120 days as stated above.

CONCLUSION

My hope is that this eBook helped to educate you about Michigan's motorcycle law, motorcycle injury compensation and motorcycle accident claims.

We have many other eBooks that cover motorcycle insurance and Michigan's no-fault law!

Best Insurance Advice
for Michigan Motorcyclists

No-Fault Law & PIP Medical Choice
for Michigan Motorcyclists

Michigan Motorcycle Insurance:
Without it, You're F*cked!

Storing Your Motorcycle for the Winter

Which Insurance Company Pays
Your No-Fault Benefits

The MCCA Legal Guide

Pothole Damage Claims

These eBooks are FREE to download at our website:

www.MotorcycleLawyerMichigan.com