

Welcome to MichiganAutoLaw.com Radio, brought to you by MichiganAutoLaw.com. The Attorneys at Michigan Auto Law combine to form Michigan's largest law firm, completely specializing in automobile, truck and motorcycle accident issues. Now here's your host, Steve Quick.

Steve Quick: Hi. We're talking with Steve Gursten, an attorney with Michigan Auto Law. Today, we're going to talk about how Michigan's auto accident laws work. Hi, Steve and welcome to the program.

Steve Gursten: Hi, thank you so much for having me.

Steve Quick: It's a pleasure. Explains to us what happens when someone gets into an auto accident.

Steve Gursten: Sure. You know it's funny because Michigan is a no-fault insurance state, so it's actually a little counterintuitive. Everybody always thinks that when you're in a car accident it's always about the case against the person who causes the car accident; the wrongdoer driver. But in Michigan, you actually have three cases, not just one. So, your first case is your mini tort case. Your second case is what's called your first party case. That's your case with your own insurance company. And then, you have your third case, which is against the wrongdoer.

Steve Quick: Well, what exactly is no fault?

Steve Gursten: OK. So, no fault was the system that was created in Michigan in 1973, and it means just like it sounds, that it's no fault. So, regardless of fault, which is why they call it no fault, your own insurance company is going to provide you certain no fault insurance benefits and they're really great. In fact, no fault is probably one of the greatest things that Michigan citizens have that most people know absolutely nothing about.

Steve Quick: Well, if I understand it correctly, it means that I'm responsible for insuring my own automobile and my own injury costs, and those kinds of things.

Steve Gursten: Well, your insurance company is. So, the premise is this. Because it's no fault, if you're in a car accident, you're going to turn to your own insurance company and they're going to pay you certain benefits. But those benefits are really generous. They're actually some of the most important protections that people have in the entire country. And we actually do it in a very affordable way, even though it might not seem that way. So the benefits which are really unique and special to Michigan, there are actually five benefits and the first is, you can receive medical for life if you suffer a very serious or catastrophic personal injury, which means, no matter how expensive the medical care that you need, no matter how expensive the testing, you can recover that care for the rest of your life. No other state has that kind of protection. So, I always say, god forbid you're ever in a terrible car accident, but if you are, you really want to be in one in Michigan. The second benefit that people receive is what's called your no fault wage loss. And that's for the first three years after a car accident and you're paid at 85% of what you would have made, if you had been working. That's why they call it wage loss. Wages you've lost because of your injuries from the accident. The third benefit is what's called replacement services.

And that is replacing services or things around your house that you would have performed but for your injuries, and someone is replacing those services for you and that's paid at up to \$20 per day. You're reimbursed for your medical mileage, every time you go to or from any doctor or hospital, and in these days of \$4.00 gasoline, that does add up. And then finally, if you're injuries are catastrophic or serious enough, there's another benefit called attendant care, which means that because you're so injured that you need an attendant to provide care. Things like your activities of daily living. It could be things like brushing your teeth, helping you get dressed, toileting, bathing, etc. These are services that are for extraordinary injury but that can also be provided and is paid by your no fault insurance company. And what you're talking about, in general, is a scope of protection that is really important and very good. The trade off –because there's always a trade off – is we provide very good benefits to get people their medical and their wage loss, but the trade off is they've made it much harder to sue a wrongdoer driver who causes the car accident – and when I say the wrongdoer driver, in reality, it's always his or her insurance company – but we've made it much harder and we've created this, kind of, threshold test that is meant to weed out injuries that are serious from entering the court system. And that's the trade off we have in Michigan. It's, on the one hand, very generous protections, vital protections in terms of peoples' medical care and their wage loss for three years and attendant care. And the trade off is we've made it harder to sue for everything but the more serious personal injuries.

Steve Quick: What is the mini tort that you mentioned?

Steve Gursten: So, the mini tort is basically the incidental expenses for vehicle damage that people, unfortunately will have to pay for out of their pocket once they're involved in a car accident. It is capped at \$500. And the premise is... and when I say that, everyone always kind of shakes their head and they say, well, my bumper is going to be more than \$500. And what people have to understand is that it's not vehicle damage. People can purchase optional collision coverage if they want that. So, they can pay for the full extent of their car damage repairs. What the mini tort is supposed to be those incidental, out-of-pocket expenses, the first \$500 of which the wrongdoer's insurance company will pay or will reimburse you, if you suffered vehicle damage in a car accident.

Steve Quick: What kind of expenses are you talking about in the mini Tort?

Steve Gursten: It could be everything from the deductible, it could be the first \$500 in car damage, but basically what they do is they have a strict cap for the first \$500 that is what you would have to pay out of pocket for vehicle damage from a car accident.

Steve Quick: Could you explain what our threshold law is?

Steve Gursten: Sure, and that's where things get interesting. Michigan has kind of - since I'm an auto accident attorney, excuse the pun – but it's kind of whiplashed back and forth in the last couple years. But essentially, Michigan has a threshold test. And that test is what's called a serious impairment of body function. So, that's the test. That's the threshold test that people have to meet in order to recover money damages for their pain and suffering and for their excess economic losses. And notice I

said excess. Because, remember, the first three years are being paid by your own no fault insurance company. So, if you're still disabled and you can't go back to work, everything after that is paid by the wrongdoer's insurance company, up to or through the policy limits and their assets. So, the way the threshold test works in Michigan, we have a very tough state, and the way to look at is this and this is where I always counsel the people on helping. The laws impairment, it's not pain, it's impairment. The definition is a serious impairment of body function. So, in the order to recover money damages for your pain and suffering in Michigan, you have to show how your injuries serious impair how you live your normal life. So, the way I try to explain it to people is this. In Michigan, unlike any other state, it is not enough if you are completely innocent. It is not enough if you are in serious pain. If you can't show how your life is different, or how it's been impaired after a car accident, compared to before that car accident, then you may not be able to sue the wrongdoer driver who caused all your injuries, even if you're going to have serious pain or problems for the rest of your life. So, it's a little bit hard for some people to understand because, really, only lawyers could draft a law that's complicated but the test is impairment, not pain.

Steve Quick: What kind of personal injury protection benefits are we entitled to in Michigan?

Steve Gursten: When you're in a car accident, you have three cases. Your mini tort, which is by statute for \$500, your first party no fault protections, and those are the five benefits that I talked with you about a moment ago, which is your medical bills for life, replacement services, lost wages, medical mileage and attendant care. And then, what's also considered part of the no fault protection – no fault act – would be the third party or the wrongdoer case against the wrongdoer. And now and again, would be for your injuries and your pain and suffering, and any excess economic loss after three years.

Steve Quick: Well, what you described lets us know just how complicated the situation is when you do into a serious auto accident.

Steve Gursten: It is. People have to remember that they've got more than one case. They always have three potential cases and that's why it's always good to, at least, talk to a lawyer and make sure they understand all their legal rights, because each case is very specific laws and, more importantly, time deadlines in order to be successful and not lose important legal protections. So, for example, in your no fault case with your own insurance company for your no fault benefits, we have a very strict one-year statute of limitations, which is very tough. And there are very, very few exceptions to that. If you're injured because of a wrongdoer driver, it could be three years. But if it's contractual, let's say, for example, you're hit by a hit and run driver. Well then you would turn back to your own insurance company for your uninsured motorist, and that can be entirely different time limit. So, it's really important that you look at policies or talk to an attorney right away so you don't lose important protections.

Steve Quick: Well, and it also sounds like you need to speak to an attorney that really specializes in auto law.

Steve Gursten: Yes, auto law is a very interesting area of personal injury law, and it's very complicated, because in this world now with health insurance and PIP and the interplay, and then you'll have other things like ERISA liens and Medicare or Medicaid liens. It really does pay to talk to someone who is sophisticated and experienced in this area of law, because unfortunately, a lot of problems can arise and you want to make sure that you're following things correctly so that you can receive the full benefit of Michigan Law.

Steve Quick: Well thank so much for talking with us today. This is Steve Quick and I've been speaking to Steve Gursten, an attorney with Michigan Auto Law. Thanks for joining us today.

Steve Gursten: Thank you so much for having me.