

## News Story

### Lawyers Must Understand Auto Insurance, No-Fault

#### Knowing How To Advise, When To Refer Is Critical

Even if you do not specialize in "auto law" you should still have a basic understanding of automobile insurance and Michigan's no-fault system, experts tell Lawyers Weekly.

Such knowledge will not only help you advise clients regarding coverage options but, in the event of an auto accident, it will also help you decide whether to take the case or refer it to an expert.

According to Livonia attorney Michael S. Hale, an insurance broker and specialist, many Michigan drivers buy automobile insurance the way they buy janitorial supplies, which is a mistake.

"All policies and insurers are not alike," Hale explained.

Therefore, he said, attorneys should at least understand:

- \* how to read a policy;
- \* the definition and nature of personal injury protection (PIP) benefits;
- \* the difference between coordinated and uncoordinated policies; and
- \* uninsured/underinsured motorist coverage and third-party claims.

With this knowledge, attorneys can help their clients obtain the right coverage. This can make all the difference when an accident occurs.

In the event of an accident, the question for the attorney then becomes whether to take the case or refer it out.

According to Lansing attorney and no-fault specialist George T. Sinas, this decision is a no-brainer when the case is complicated.

"Michigan has had a no-fault system for 30 years," he noted. "Even though it was created to simplify recovery for auto accidents to take care of people's economic needs without having to prove fault, the system has resulted in a very complex reparation system with a couple thousand appellate decisions and numerous quagmires."

Non-specialists confront some important questions when trying to determine if they should get involved, Sinas observed. Those questions include whether the attorney knows the law — that is,

does the client meets the current threshold test for serious impairment of bodily harm — and whether the attorney has the advocacy skills to prove the extent of the injury.

Sinas also said attorneys should not take a third-party case without a good grasp of first-party issues.

"This has always been problematic to me because, so often, the PIP case is where the client gets taken advantage of by the insurance company," Sinas explained. "You're basically saying to the client, 'I'm going to throw you to the wolves on that stuff because I really don't understand all the PIP intricacies so I'm just going to handle the old fashioned pain and suffering case.'"

Meanwhile, Southfield auto law expert Steven M. Gursten, whose firm specializes in car and truck cases, said he sees this issue all the time.

Gursten, who often sits as an arbitrator and case evaluator in these cases, said it is the specialists who get the biggest awards.

"I see non-specialists settling for \$10,000 on cases where an expert would get \$100,000," he noted.

In such a case, a referral would be much better for both the attorney and the client, experts said.

### **Read The Policy**

When addressing any no-fault issue, Hale said the first thing an attorney must do is examine the insurance policy's declarations pages.

"These pages are the starting point for understanding what coverage applies," Hale said.

The declarations generally appear within the policy's first few pages and list what vehicle is insured, the policyholder, the liability limits, uninsured/underinsured motorist coverage, deductibles, whether there is collision coverage and, sometimes, the names of the insured drivers.

### **PIP Benefits**

Under no-fault, an automobile insurance company will pay first-party — or PIP — benefits to the policyholder and certain other people injured in an automobile accident without regard to fault.

Available benefits include medical expenses, work loss benefits, replacement services up to \$20 per day, survivor loss benefits and funeral expenses.

Sinas said issues such as attendant care (who will take care of the injured insured), replacement services, and house remodeling for handicap modifications often come up in this area.

"When I take on a serious injury case, I'm always watching what's happening on the PIP side and the insurance company knows I'm watching," he said.

Sinas actually assigns each auto accident client a paralegal, thus helping to ensure that the client gets all of the benefits to which he is entitled.

"I've never seen a case where the insurance company has given the client everything they need," he observed.

### **Coordinated vs. Uncoordinated**

As a cost-cutting measure, policyholders can purchase "coordinated" policies. This means the no-fault provider is liable for health or disability payments only after any other insurance policy has paid.

Most no-fault policies are now written in this manner because it is cheaper and consumers tend to shop for the best deal.

Often, health insurance is secondary to any automobile coverage. To resolve this conflict, the Michigan Supreme Court has held that the no-fault policy will always be secondary to any other policy. This conflicts with federal law, however, which automatically trumps state law.

Under the Employee Retirement Income Security Act (ERISA), employee benefit plans with coordination provisions will always be secondary, even if the employer's policy contains a Michigan choice of law provision.

Although consumers can save money by purchasing coordinated no-fault policies, they should be aware of the pitfalls — they may be required to pay a deductible before the no-fault coverage applies and they may unintentionally deplete life-time health insurance benefits.

"For example, a Blue Cross PPO has a \$5 million maximum lifetime benefit for all health claims, while others have only \$1 million," Hale explained. With a catastrophic injury, those limits could be reached in hurry.

### **Work Loss**

Attorneys must also understand that work loss PIP benefits are limited to a statutorily fixed amount — 85 percent of the injured person's monthly gross wages up to \$4,156 as of Oct. 1, 2003.

"A major issue regarding work loss benefits is whether the 2003 statutory amount in any 30-day period is adequate and whether your client should buy supplemental disability coverage either through the automobile policy or elsewhere," Hale explained.

This is particularly important for clients who are high wage earners. One important consideration is whether the statutory work-loss amount will be adequate.

Hale said attorneys can advise their clients that they can purchase more than the statutory benefit in both amount and time period.

### **UM/UIM Coverage**

Because most consumers are always looking for the best deal, the majority of drivers carry the statutory minimum residual no-fault coverage of \$20,000 per person, \$40,000 per occurrence, and \$10,000 for property damage

"Unfortunately, the \$20,000 is the same \$20,000 that our Legislature mandated as minimum policy limits back in 1973 when the No-Fault Act was put in place," Gursten said. "In today's dollars, that is about \$6,000."

This means that if there is a serious injury, the most a person can recover from the minimally-insured driver's insurance company is \$20,000.

"I tell my clients and nearly everyone I meet that underinsurance is the greatest coverage no one knows about," Gursten noted, adding that uninsured motorist coverage is equally important because it has been estimated that more than one million Michigan drivers have no insurance at all.

How important is this coverage?

"You're crazy if you don't have uninsured and underinsured coverage," Sinas stated.

However, not all insurance companies offer this type of coverage.

"Some of the largest writers of automobile insurance in Michigan do not offer underinsured motorist coverage," Hale said.

Of the ones that do, most require that, if a person wants underinsurance, the person must up their own residual liability limits — a small price to pay for security, however.

Gursten also said he cautions his clients to make sure they know the amount of underinsurance they have purchased.

"Sadly, some insurance companies are selling \$20,000 UIM policies," Gursten stated. "If the at-fault vehicle has liability limits equal to the UIM limits, then by definition the wrongdoer is not 'underinsured' and it is illusory and worthless coverage."

Sinas added that the uninsured and underinsured provisions often have very short notice periods, so the practitioner must be diligent and act quickly to ensure that the client is covered.

"The quick notice provision is a huge malpractice trap," Sinas pointed out.

### **How Much Is Enough?**

When counseling clients about uninsured and underinsured benefits, how much is enough?

According to the experts, \$250,000 to \$500,000 is about right and can be purchased for an additional \$40.

"For the price of a movie and popcorn, my clients can properly protect themselves and their families," Gursten explained.

Sinas recommends \$300,000 "at the bare minimum."

"You're much better off to buy \$500,000 across the board and then buy an umbrella on top of that," Sinas said.

### **The Third-Party Claim**

Finally, third-party claims are where the pay-off lies.

Gursten said he often sees non-specialists settling claims for a fraction of their worth. As such, he highly recommends referring them out.

Sinas agreed.

"The non-specialist will be further ahead if he refers the case," Sinas said.

Gursten explained that if a case is worth \$100,000 but the non-specialist only gets \$10,000, the attorney fees are \$3,300.

However, if the non-specialist refers the case and the specialist gets its full value of \$100,000, then the non-specialist will get a third of the contingency fee — \$11,000.

Nonetheless, general practitioners can and will handle no-fault cases themselves. They are well advised, however, to know and understand the basic principles before they jump in.

"To handle these cases successfully, attorneys must go to the classes, keep up with the law and read the cases," Gursten said.

Sinas agreed, adding that attorneys who take on these cases must be prepared to go the distance, including financially.

"Attorneys have to ask themselves, can I afford to take this all the way?" Sinas said.

When considering the cost of accident reconstruction, expert examinations and depositions, third-party cases can cost the lawyer \$10,000 or more.

"It's not unusual for these cases to cost at least \$10,000, some can go higher than that, " Sinas said.

Finally, Sinas explained that unless you are prepared to go to trial, you have no hope of maximizing the case's value.

"The insurance companies know who is willing to belly up to the bar and pay that money," he said. "They know who has staying power — if you don't, they will wear you down."

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