

Michigan Legislature Doubles No-Fault 'Mini-Tort' Liability

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Effective October 1, 2012[1], Michigan's No-Fault Act's "mini-tort" claim provisions (MCL 500.3135(3)(e)) will increase the mini-tort limits from \$500 to \$1,000 in accordance with the recent passage of House Bill 5362.

In addition, owners or registrants of an uninsured vehicle will no longer be able to recover mini-tort damages to their vehicle from an at-fault driver (MCL § 500.3135(4)(e)).

An insured driver's limited property damage liability, otherwise known as the mini-tort, is an exception to tort immunity for property damage contained in Michigan's No-Fault Act, which does not allow an automobile accident victim to sue the at-fault driver for damages to his/her vehicle. This mini-tort exception allows an individual to recoup out-of-pocket costs for vehicle damage repairs from an at-fault driver, for amounts not covered by insurance, if the victim is not more than 50 percent at fault for the accident.

Michigan is the only state in the nation that does not require drivers to carry limited property damage liability insurance. Most insurance companies offer it as optional coverage. For Michigan drivers, opting not to carry limited property damage liability insurance, a claim under the mini-tort provisions helps the individual bear the cost of repairing damage to his/her vehicle while protecting the at-fault party by limiting his/her liability to \$1,000.

One section that remains unaffected by the bill relates to comparative fault, which allocates liability on the basis of the relative fault of all persons contributing to the plaintiff's damages. This provides that, if an individual suing under the mini-tort provisions contributed to the accident, his or her percentage of fault will be subtracted from the total property damage amount recoverable. However, there is a caveat – a plaintiff who is more than 50 percent at fault cannot recover any mini-tort damages (MCL § 500.3135(4)(a)).

As a result of the changes in Michigan's mini-tort provisions, three scenarios will arise following an accident in which vehicle damage occurs. First, an individual with a no-fault insurance policy that does not include collision coverage can seek up to \$1,000 in mini-tort damages from the at-fault driver. Second, a policyholder with collision coverage can recoup up to \$1,000 from the at-fault driver, up to the amount of the policyholder's collision deductible. Third, an individual owner or registrant of an uninsured vehicle will have no mini-tort claim against the at-fault party.

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Jurisdiction over mini-tort claims remains unchanged. MCL § 500.3135(5) states that an action “shall be commenced, whenever legally possible, in the small claims division ... ” Under Michigan law, however, there is no right of appeal from the small claims division. The statute also states that “[i]f the defendant or plaintiff removes the action to a higher court and does not prevail, the judge may assess costs.”

In short, both the small claims division and the district court each have their own advantages and disadvantages. Therefore, an insurer should weigh the possible costs, fees and consequences of removing a matter to district court against the benefits of an early, less-costly resolution in the small claims division.

In light of these recent amendments, insurers offering limited property damage liability insurance should consider raising the amount offered from \$500 to \$1,000. While this coverage has been relatively inexpensive since its inception, the doubling of the claim limit properly justifies a rate increase.

Now that individuals can sue for \$1,000 under Michigan's newly revised mini-tort provisions, insurance companies that offer \$1,000 collision deductibles may have good reason to suggest the higher deductible.

For further information about changes to mini-tort provisions of Michigan's No-Fault Act or if you have questions about how the changes could affect your business, please contact the authors of this Rapid Report or any member of Plunkett Cooney's Transportation or Litigation practice groups.

For a complete copy of House Bill 5362, [click here](#).

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[1] While House Bill 5362 states that “[t]his act is ordered to take immediate effect,” and MCL § 500.3135 states that “[this section is amended effective October 1, 2012],” existing policies already in effect should be unaffected. Most No-Fault attorneys agree that the Bill was intended to become effective October 1, 2012.