

The Other Vehicle

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Mitchell McIntyre
(313) 983-4933
mmcintyre@plunkettcooney.com

Perplexing Intersection of Motorcycle Law, Michigan No Fault Act

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At just over 300,000, Michigan rounds out the list of Top 10 states in the country with the highest number of registered motorcycles. Of the remaining nine states, only Florida (#2 overall) and New York (#8 overall) have mandatory no-fault laws.

Adjusting for population (Florida and New York have nearly twice the population of Michigan), Michigan has the most motorcycles per capita of all states requiring no-fault insurance with close to one registered motorcycle per 30 persons.

Of the Top 10 registered motorcycle states that require no-fault insurance, only Michigan allows motorcyclists to claim no-fault benefits from the “involved” motor vehicle regardless of fault (both New York and Florida no-fault entirely exclude motorcycles).

Michigan’s no-fault priority statute dictates that when a motorcyclist is injured in an accident involving a motor vehicle, the motorcyclist first looks to the no-fault insurer of the motor vehicle (or its operator) before looking to the motor vehicle insurer of the motorcyclist owner or operator. If none of these options are available, then the motorcyclist may claim benefits from the Michigan Assigned Claims Facility.

In other words, as long as a motor vehicle is “involved,” the motorcyclist has access to no-fault benefits. So, what does this really mean?

Michigan motorcyclists have access to unusually extensive no-fault benefits not typically available anywhere else. To be clear, Michigan does not require and motorcycle insurers do not offer no-fault insurance policies for motorcycles. Motorcycle owners are only required to purchase what is commonly known as “PLPD,” which insures the owner/operator of the motorcycle against bodily injury and property damage tort claims.

Motorcyclists have the option of purchasing what is known as “med-pay” in increments of \$5,000, which operates as non-fault based medical coverage that is ultimately dictated by the terms of coverage. So-called “med-pay” is required to be available to motorcyclists via the Michigan No-Fault Act but is rarely purchased.

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Typically a motorcycle accident “involves” a motor vehicle, meaning that injured occupants from both vehicles likely claim from the auto insurer of the motor vehicle involved, regardless of fault. Additionally, the exposed nature of motorcycle passengers to the external forces of motor vehicles commonly leads to severe motorcyclist injuries and extensive no-fault benefit claims.

When is a motor vehicle “involved?”

The Michigan Court of Appeals recently clarified this issue in the unpublished decision *Grange Ins Co of Michigan v Bozung*, 2013 WL 2460122 (June 6, 2013). In *Grange* the sole issue was whether the insurer of the motor vehicle (a Suburban) was liable for no-fault benefits to the passengers of a motorcycle operated by Dennis Bozung, when a dispute arose about whether there was ever physical contact between the vehicles.

The appellate court clarified that when there is physical contact between the injured party and a motor vehicle, that motor vehicle is “involved” under MCL 500.3114(5), noting that there is no case where there was physical contact between the injured motorcyclist and the motor vehicle where the motor vehicle was not found to be “involved.” In other words, “involvement” is only truly at issue when there has been no physical contact with the motor vehicle. In these circumstances, the court noted that a motor vehicle may be involved where it has actively, as opposed to passively, contributed to the accident and a mere but for causal relation without physical contact is not enough to show “involvement.”

In *Grange*, the appellate court affirmed the trial court’s denial of Grange’s motion for summary disposition because there was a clear issue of fact regarding whether the motorcycle and/or motorcyclist actually contacted the Suburban in question.

Just a few months later, in *Detroit Med Ctr v Progressive Mich Ins Co*, 2013 WL 3814363 (Mich Ct App July 23, 2013), the appellate court went a step further in holding that a motorcyclist, who did not physically contact a motor vehicle but “laid his bike down” after seeing headlights approaching was not involved in a motor vehicle accident. The appellate court in *Detroit Med Ctr* reasoned that since there was no evidence that the motorcyclist had to take evasive action because of the headlights, there was no active contribution by the motor vehicle, and, therefore, no-fault benefits were not available to the motorcyclist.

Follow Plunkett Cooney’s *Legal Trend* for future updates regarding the unusual interplay between motorcycles and the Michigan No-Fault Act.

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