

**ANALYSIS OF MOTORCYCLIST INJURY CLAIM UNDER CURRENT MICHIGAN LAW VS IF NO-FAULT LAWS
ARE REPEALED¹**

Motorcyclist is injured when a motor vehicle negligently pulls out in front of him causing him to sustain loss of teeth, fractured ribs, fractured clavicle (no surgery required), collapsed lung and abrasions of his hip. He incurred approximately \$87,161.09 in medical expenses, was disabled from returning to work for 6 months to his part time self employed job (retiree) where he earned approximately \$833.33 per month, and for approximately 2 ½ months required friends/family to perform his household chores and required approximately 248 hours of attendant care (i.e., assistance with dressing, bathing, hygiene, bandages, etc) from friends/family.²

Under current law, the injured motorcyclist has 2 separate and distinct claims.

1. MICHIGAN NO FAULT BENEFITS³

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| A. | WAGE LOSS | No Fault insurer is required to pay 85% of gross wages up to statutory maximum for up to 3 years |
| | RESULT | No Fault insurer pays motorcyclist \$4,249.98 in lost wages (85% of his lost wages) |
| | IF REPEAL | Motorcyclist has no claim for no fault wage loss payments. |
| B. | MEDICAL EXPENSES | No Fault insurer is required to pay unlimited medical expenses consisting of “reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery or rehabilitation” |
| | RESULT | No Fault insurer pays motorcyclists medical expenses (\$87,161.09) |
| | IF REPEAL | Motorcyclist has no claim for no fault medical expenses. |
| C. | ATTENDANT CARE | No Fault insurer is required to pay unlimited medical expenses consisting of “reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery or rehabilitation” |

¹ Without knowing what any specific no fault repeal laws would state, this analysis is based on the assumption that any repeal of Michigan’s No Fault system would allow an injured claimant to claim economic loss as part of his/her tort claim. This document was prepared by Dondi Vesprini, attorney for ABATE of Michigan, on 9-24-18.

² Facts and figures represented are for the purposes of demonstrating a claim where the motorcyclist sustained mild/moderate injuries and are taken from a motorcycle accident claim for which the motorcyclist was represented by Dondi Vesprini, attorney for ABATE of Michigan.

³ Below is a list of the most commonly claimed no-fault benefits. Other no fault benefits can include, but are not limited to, medical mileage, home modifications, vehicle modifications and vocational retraining as they may apply.

Common rate for amount and level of attendant care claimed is \$15.00/hour

RESULT No Fault insurer pays motorcyclists family/friend attendant care providers \$3,720.00 (248 hours x \$15/hour)

IF REPEAL Motorcyclist has no claim for no fault attendant care benefits.

D. HOUSEHOLD SERVICES No Fault insurer pays up to 3 years worth of expenses not exceeding \$20.00 per day incurred in obtaining services that injured person would have done for themselves but for the injury. This benefit is also known as “Replacement Services.”

RESULT No Fault insurer pays motorcyclists family/friend household chore providers \$1,560.00 (\$20/day x 78 days)

IF REPEAL Motorcyclist has no claim for no fault household service benefits.

2. PAIN AND SUFFERING

Motorcyclist may make a claim against the at-fault driver/owner for “pain and suffering” which includes compensation for pain, suffering, loss of ability to perform hobbies or activities of daily living, residual scarring, etc. In Michigan, a driver is only required to carry a minimum of \$20,000.00 in insurance coverage (residual liability coverage) for “pain and suffering” damages. Other typical amounts include \$100,000.00 and less frequently \$250,000.00

RESULT Motorcyclist may receive up to the at fault driver’s policy limits for compensation for his pain and suffering.

IF REPEAL Motorcyclist may receive up to the at fault driver’s policy limits for his economic loss and pain and suffering. Consequently, if the motorcyclist’s economic loss is greater than or equal to the applicable policy limits, it will leave no recovery for pain and suffering and in some instances will not even cover the economic loss sustained.

For example, in the given scenario, the motorcyclist incurred \$96,691.07 in economic loss. If the at fault party had \$20,000.00 in liability insurance the motorcyclist would still be at a \$76,691.07 loss for his economic damages. If \$100,000.00 in liability insurance, the motorcyclist would only realize \$3,308.93 for pain and suffering and so on. To add perspective, in a recent motorcycle accident case where the motorcyclist was severely injured with fractures of his humerus, tibial plateau, a metatarsal, orbital bone and ribs, his medical expenses totaled approximately \$485,000.00 in the first 10 months alone.