

Know Your Rights

The Law of Automobile Accidents



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I. INTRODUCTION

This pamphlet is devoted to explaining how the law affects your rights as a driver of or a passenger in a car. The pamphlet will be broken down into sections dealing with bodily injury, payment of medical bills and wage loss, source of payment for medical bills, uninsured motorist and underinsured motorist benefits, assigned claims plan, comparative negligence, rules of the road, workers' compensation, and mandatory insurance.

II. CLAIMS FOR BODILY INJURY (LIMITED VS. FULL TORT)

A person injured in a car accident can make a claim for pain and suffering if he or she has elected full tort on the insurance policy covering their own car. A person injured in a car accident who has limited tort on the policy covering their own car can only make a claim for pain and suffering if he or she suffered an injury which has resulted in a serious impairment of a bodily function, death, or a serious disfigurement.

The courts in Pennsylvania have emphasized how the injury has impaired or prevented the full usage of the part of the body that has been injured, in determining whether a person has suffered a serious impairment of a bodily function. There have been cases where a person with a fracture has not qualified as a serious impairment

because the fracture has not significantly interfered with the person's daily personal or work life.

A person who has elected limited tort can be deemed to have full tort if the other driver causes the accident and is convicted of driving under the influence, or has a car registered in another state. A person not owning a car can also be deemed to have full tort provided he or she is not insured under another policy.

The moral of this story is that everyone who owns a car in Pennsylvania should have full tort. This allows someone to recover for pain and suffering without having to prove they have suffered a serious impairment of a bodily function.

A lawsuit for pain and suffering must be brought within two years of the date of the accident unless the suing party is under eighteen (18). In that case, a lawsuit can be brought on their behalf by a parent and/or natural guardian before they are 18, or by themselves within two years after reaching their eighteenth birthday, i.e. 20 years of age.

III. PAYMENT OF MEDICAL BILLS AND WAGE LOSS

Because Pennsylvania is a "no fault" state, the insurance carrier insuring the injured person's car must pay for all reasonable and necessary medical bills and wage loss irrespective of who was at fault or whose car was being occupied at the time of the accident. The

coverage for personal injury protection (PIP) i.e., payment of medical bills and wage loss, follows the person and not the car they are in.

Many insurance carriers promote the minimum coverage of \$5000.00 for payment of medical bills. In today's world, \$5000.00 can be used up very quickly. It is highly recommended that a minimum of \$15,000.00 be carried for medical coverage.

Wage loss is optional for coverage on auto policies. In order to assert a wage loss claim, it is necessary to have the employer and the doctor supply information in writing to the insurance carrier.

A lawsuit against the first party insurance carrier must be brought by the medical provider or the patient within four (4) years of the date of last payment by the carrier, or within four (4) years of the accident, whichever is greater.

IV. SOURCE OF PAYMENT FOR MEDICAL BILLS

There is much confusion as to which insurance policy will pay for medical bills caused by an auto accident. The general rule is that the policy follows the person, that is, the insurance policy on the car of the injured person pays for medical bills even though that policy was not involved in the accident.

This same rule applies to anyone named on the insurance policy as being insured under the policy.

Thus, even though a wife may own the car and have the insurance policy in her name, her husband would also be covered if he were named on the policy. The same thing would apply if a child resided in the same household.

If there are no other policies which can be turned to and the injured person is an occupant of the car, the policy covering the car in which the occupant was injured will pay for the medical bills. If the person who was injured did not occupy any vehicle but was a pedestrian, that person can have any policy covering any vehicle involved in the accident pay for the medical bills.

If an injured person owns a car without insurance, they cannot have their medical bills paid by anyone else's insurance policy.

V. UNINSURED AND UNDERINSURED MOTORIST COVERAGE

Unfortunately, uninsured motorists coverage is optional in Pennsylvania. This insurance coverage kicks in when the car that caused the accident is uninsured or leaves the scene. If the person who causes the accident leaves the scene, it is absolutely essential that the accident be reported to the local police so a police report can be generated. It is also a requirement that the accident be reported to one's own insurance carrier within thirty (30) days of the accident.

If someone has elected limited tort, they still must have a serious impairment of a bodily function even if it is an uninsured motorist case to collect for pain and suffering. This does not apply if full tort has been elected.

Underinsured motorist coverage applies when the person who caused the accident does not have sufficient liability insurance coverage to satisfy the claim for pain and suffering of the person who is less or not at fault. As an example, if the person who caused the accident only has the minimum \$15,000.00 of liability coverage and the injured party's case is settled for \$100,000.00, \$85,000.00 should be paid by the underinsured portion of the injured party's policy.

Many times the insurance carrier for the uninsured and underinsured coverage cannot agree with the claim being presented by their own insured. This usually requires the case being submitted to arbitration under the insurance policy for resolution.

Both uninsured and underinsured motorist coverage is voluntary. It is highly recommended that a person insures their car carry both forms of coverage.

VI. ASSIGNED CLAIMS PLAN

The Assigned Claims Plan is organized and maintained by various insurance carriers in Pennsylvania. A qualified person can obtain monies from the Plan if certain conditions are met.

A person can have their medical bills, up to \$5,000.00, paid by assigned claims if they are a resident of Pennsylvania, the accident occurred in Pennsylvania, the injured person does not own a car, or the injured person does not occupy a bus owned by an authority such as Septa, and cannot have their bills paid by any other insurance policy. The person can recover uninsured motorist benefits up to \$15,000.00 for pain and suffering.

VII. MANDATORY INSURANCE

Every car registered in Pennsylvania must carry \$15,000.00 of liability insurance.

VIII. RULES OF THE ROAD

Although everyone is required to pass a test before getting a driver's license, many people forget the rules regarding the usage of a car. The most significant one is the assured clear distance rule. This rule requires everyone while driving a car to be able to come to a full stop before striking another car. The rule is also dependant on the conditions of the road at the time of the accident. Thus, if it is raining or snowing out, a person must drive their car slowly enough to bring it to a stop before striking another vehicle.

Another rule is that before making a left hand turn, a person must be sure they can do so in a safe manner. This is true even if a left turn is made with a green light.

Right of way is also a vital rule of the road. At an intersection without a stop sign or light, the person on the right has the right of way. Vehicles already on the road have the right of way over vehicles coming from a parking lot.

IX. COMPARATIVE NEGLIGENCE

Just because someone is partially at fault in an auto accident does not mean they cannot recover for injuries sustained in the accident. Pennsylvania has a comparative negligence law whereby as long as the negligence of the person bringing the claim is equal to or less than the other driver, the person bringing the claim can recover.

As an example, if a person is 50% at fault, they can recover for their injuries, including pain and suffering. If they are 51% at fault they cannot. Only a judge, jury, or arbitration panel can make a final determination as to the percentage of fault to be charged to each driver.

X. WORKERS' COMPENSATION

If someone is injured in a car accident while on the job, the workers compensation policy of their employer must pay for any medical bills before any other policy.

Furthermore, a worker's compensation carrier can collect any monies from the insurance company covering the car which caused the accident by way of subrogation. The workers' compensation carrier cannot recover monies it expended from the uninsured motorist carrier.

XI.24 DO's & DON'Ts ABOUT AUTOMOBILE ACCIDENTS

1. **DO** call the police to the scene to take a report.
2. **DON'T** admit any fault for the accident or volunteer any information.
3. **DO** obtain the names, addresses, and phone numbers of any witnesses at the scene.
4. **DO** seek immediate medical care if you are injured.
5. **DON'T** delay contacting your attorney for assistance regarding your claim.
6. **DO** take photographs of your damaged vehicle and your injuries right away.
7. **DON'T** fail to obtain a copy of the police accident report as soon as possible.
8. **DON'T** appear in court without first consulting your attorney.
9. **DO** report all of your complaints of pain and discomfort.
10. **DO** return to your doctor for any continuing pain or discomfort.
11. **DON'T** fail to keep all scheduled doctor's appointments.

12. **DON'T** fail to follow instructions from your doctor.
13. **DO** have you damaged vehicle repaired, sold, or disposed of within a reasonable time.
14. **DON'T** leave your damaged vehicle at a storage lot which will incur daily storage charges.
15. **DON'T** talk to any insurance adjusters- yours or the other driver's- without first consulting your attorney.
16. **DON'T** give any written records or statements.
17. **DO** make certain any time off work because of your injuries is approved in writing by a doctor.
18. **DON'T** fail to inform your employer of all time off work that is caused by or related to your injuries.
19. **DO** send originals of all hospital, doctor, prescription and other expense bills to your attorney, and save copies for you records.
20. **DO** supply your attorney with your own related insurance policy and declarations page as soon as possible.
21. **DON'T** fail to supply your attorney with any subsequent letter you receive from any insurance company.
22. **DON'T** fail to report your medical treatment status to your attorney at least monthly.
23. **DO** keep a written diary of how your injuries affect your normal activities at home and at work.
24. **DO** inform your attorney of any changes in your address, telephone number, employment, or medical treatment.

XII. FREQUENTLY ASKED QUESTIONS

1. Do I have a case?

The answer to this question can only be given after a thorough analysis of the facts and law has been done. For any type of personal injury case, a client can recover monetary damages if the following questions are answerable in the affirmative: (1) Does the potential wrongdoer owe a duty to the injured person?; (2) Is the injured person's status appropriate for recovery under the law?; (3) Has the duty owed the injured person by the wrongdoer been breached; (4) Was it reasonably foreseeable that harm would be suffered by the injured person if this breach occurred?; (5) Did the injured person suffer damages?

2. How will my attorney be paid?

The attorney is paid only if monetary damages are recovered for the client. This is called a contingency fee agreement.

3. Who bears the costs of litigation?

Usually, the attorney representing the injured person pays the costs during the course of litigation. The attorney is reimbursed at the end of litigation if there is any monetary recovery for the injured person.

4. What are the different parts of litigation and what can the client expect will happen during the course of the case?

The litigation is started by filing a complaint. The defendant then answers the complaint, and sometimes files preliminary objections. Then discovery begins during which interrogatories or written questions are asked under oath of various parties and witnesses. Depositions, or verbal questions under oath, are also asked of the parties and witnesses. Often consultation with the Court through various status and settlement conferences then ensues. Trial then occurs at the end of this process.

XIII. LAWYER BIOGRAPHY

Jules Zacher has practiced law since 1974 in state and federal court in Pennsylvania. He has represented plaintiffs in personal injury lawsuits which have included damages because of children being poisoned by lead paint, workers being injured on construction sites, persons injured in motor vehicle accidents, people falling or being injured on someone's premises, and medical providers not being paid by insurance companies.

Mr. Zacher received his law degree at Temple University in 1974, as well as a masters degree in economics from Temple in 1970. Mr. Zacher has taken non-degree course work at Princeton University, Woodrow Wilson School of Public and International Affairs. He received his undergraduate degree from the University of Pittsburgh in 1964.

Mr. Zacher's legal career has included working as a trial lawyer in one of the premier personal injury law firms in the nation prior to starting his own firm in 1982. He has litigated automobile accident cases since 1974. He has been active in community affairs in the Grays Ferry area of Philadelphia. Many of the cases he has tried have involved numerous defendants and complex issues of facts and law.

Mr. Zacher is a member of the Philadelphia Bar Association, and the Philadelphia Trial Lawyers Association. He is admitted to practice law in Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

XIV. HOW TO CONTACT THE FIRM

Jules Zacher, P.C. is a law firm incorporated as a professional corporation with offices located at Suite 707, Medical Arts Building, 1601 Walnut Street, Philadelphia, PA, 19102. Its phone number is 215-988-0160; its fax number is 215- 988-0169; and its e-mail address is Zacherlaw@aol.com. Its website is www.juleszacher.com.

XV. CASE QUESTIONNAIRE

Do I Have A Case?

Provide the details and we will make a free, preliminary determination.

Your Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

E- Mail: _____

Phone Number: _____

Enter your question or case details here: _____

I understand that my request and my response thereto does not form an attorney-client relationship