

What is Minnesota No-Fault insurance?

As the title of the statute implies, this compulsory insurance provides benefits to anyone sustaining injury and resulting loss that arises out of the maintenance or use of a motor vehicle, without regard to fault. Owners of vehicles that are registered or principally garaged in Minnesota are required to carry the insurance provided in the No-Fault Act. *Minn. Stat. § 65B.44 Subd. 3; Minn. Stat. § 65B.48 Subd. 1.*

A Basic Checklist to trigger the No-Fault Act Minn. Stat. § 65B.46 Subd. 1

- 1) Was there an accident?
- 2) Did the accident result in injury?
- 3) Did the accident arise out of the maintenance or use of a motor vehicle?
- 4) Did the accident result in loss?

All of these questions must be answered in the affirmative in order for an insured to have a claim under the No-Fault Act. *Minn. Stat. § 65B.44 Subd. 3*

Who is entitled to basic economic loss benefits?

Every person suffering loss from injury arising out of the maintenance or use of a motor vehicle or as a result of being struck as a pedestrian by a motor cycle has a right to basic economic loss benefits. *Minn. Stat. § 65B.46 Subd. 1.*

What are economic loss benefits?

Generally speaking, basic economic loss benefits provide reimbursement for all loss suffered through injury arising out of the maintenance or use of a motor vehicle, and shall provide a minimum of \$40,000.00 for losses arising out of the injury of any one person, consisting of:

- (1) \$20,000 for medical expenses arising out of injury to any one person; and
- (2) a total of \$20,000 for income loss, replacement services loss, funeral expense loss, survivor's economic loss, and survivor's replacement services loss arising out of the injury to any one person. *Minn. Stat. § 65B.44, Subd. 1.*

Disability and income loss benefits provide compensation for 85 percent of the injured person's loss of present and future gross income from inability to work proximately caused by the injury subject to a maximum of \$250 per week. *Minn. Stat. § 65B.44, Subd. 3,*

Priority for payment of basic economic loss benefits

1. Was the motor vehicle being used in the business of transporting persons or property?

If yes, then basic economic benefits are paid by the security covering the vehicle or, if none, the security for which the injured person is an insured. However, there are exceptions: *Minn. Stat. § 65B. 47 Subd. 1.*

- 1) a commuter van.
- 2) a vehicle being used to transport children as part of a day care program
- 3) a vehicle being used to transport children to a school sponsored activity
- 4) a bus while it is in operation in Minnesota
- 5) a passenger in a taxi
- 6) a taxi driver

In these exceptions, the injured party will first have to seek benefits under their own policy.

2. *Was the injured person a driver or occupant of the vehicle?*

If yes, the payment for basic economic loss benefits applicable to the injury is the injured person's own insurance. If the injured person has no insurance, the security for payment then goes to the driver's insurance or another occupant's of that vehicle. If there is still no applicable insurance, the security for payment (if not a driver) is the security for payment covering any involved motor vehicle. *Minn. Stat. § 65B. 47 Subd. 4.*

3. *Was the injured person a pedestrian?*

If yes, the security for payment of basic economic loss benefits is the security payment covering the vehicle or, if none, the security under which the injured person is an insured. *Minn. Stat. § 65B. 47 Subd. 3.*

4. *What if there is no insurance applicable that would otherwise entitle an injured person to economic loss benefits?*

The assigned claims plan, implemented by the state, was instituted just for this type of situation. The assigned claims plan allows a person who would otherwise be entitled to economic loss benefits to make a claim for benefits so long as the trigger provision of the Act has been satisfied. *Minn. Stat. § 65B. 64 Subd. 1.*

Uninsured and Underinsured Motorist Coverage (UM/UIM)

When does UM or UIM apply?

An uninsured vehicle is a vehicle for which the insurance mandated by the No-Fault Act was not in effect. *Minn. Stat. § 65B. 43 Subd. 16.* An underinsured motor vehicle is a vehicle where the liability coverage was inadequate to compensate the claimant for the loss that exceeded their economic loss benefits. *Minn. Stat. § 65B. 43 Subd. 17.*

A claimant can make a claim under their own UM/UIM coverage when the at-fault vehicle either has no insurance or an inadequate amount of liability coverage to cover the claimant's economic loss benefits and/or pain and suffering. This is a type of liability claim. The claimant must first satisfy the tort threshold for a traditional liability claim before being able to make a UM/UIM claim under their own policy. *Minn. Stat. § 65B. 51 Subd. 3.* The very general rule of thumb is that the claimant must have medical expenses that exceed \$4,000.00, permanent disfigurement or injury, death, or disability for 60 days or more in order to recover any damages for his or her non-economic detriment, such as pain and suffering. *Minn. Stat. § 65B. 51 Subd. 3(a).* Once this

threshold has been met, the claimant can make a claim under their own UM/UIM coverage for losses that exceed their own economic loss benefits.

Subrogation and Indemnity

What happens to the uninsured motorist when a claimant has made a UM/UIM claim?

Once the claimant's own insurance company has paid a UM/UIM claim, the insurance company becomes subrogated to the amount actually paid. *Minn. Stat. § 65B. 53 Subd. 1.*

The claimant's insurance company then has claim against the uninsured driver for the amount paid. The insurance company may attempt to settle the claim with the uninsured driver or may obtain a judgment in attempt to collect the amount paid to their insured.

Examples

1) Peter and Dave are riding in Dave's car when Dave loses control. The car crashes and both Peter and Dave are injured. Both Peter and Dave have the required insurance required by the No-Fault Act. *What is the appropriate source of economic loss benefits for both Dave and Peter?*

Answer: *Minn. Stat. § 65B. 47.* Both Peter and Dave would make claims under their own insurance to recover economic loss benefits.

What if Peter doesn't have insurance and doesn't own a motor vehicle?

Answer: *Minn. Stat. § 65B. 47 Subd. 4(b).* Because Peter was not required to have No-Fault insurance, he can make a claim under Dave's policy in order to recover basic economic loss benefits.

2) May is injured in a motor vehicle accident with June. June was clearly at fault however, does not have insurance on her vehicle. May's insurance paid her economic loss benefits but she still has excess economic loss and pain and suffering. A lawsuit against June would not be worthwhile because she is insolvent. *Where can May go to receive compensation for excess loss?*

Answer: *Minn. Stat. § 65B. 49 Subd. 3(a).* May will make an uninsured motorist claim under her own insurance policy. May must still satisfy the threshold under *Minn. Stat. § 65B. 51 Subd. 3(a).*, before she can make the claim. Once the threshold is met, she can make her claim for excess economic loss and pain and suffering.

Written by Andrew Essling, JD Candidate 2011 at William Mitchell College of Law and Amanda M. Furth, Esq. Ms. Furth practices in the areas of personal injury, workers compensation and family law with Jensen, Sondrall & Persellin, P.A. She may be reached at Voice 763-424-8811 or amf@jspattorneys.com