

# UNDERSTANDING MINNESOTA AUTOMOBILE INSURANCE

## HAVING GOOD COVERAGE & WHAT TO KNOW AFTER AN ACCIDENT



Information Provided by  
Denise S.S. Fullerton, Esq.  
Fullerton Law, P.A.  
651-203-5999

[www.fullerton-law.com](http://www.fullerton-law.com)

## **ABOUT THE AUTHOR**

Denise S.S. Fullerton is a Minnesota licensed attorney who has focused her practice on plaintiff's Personal Injury law for over 20 years. She assists her clients with insurance benefits, injury and loss compensation, no-fault and liability arbitration, and litigation. Her primary focus is on assisting individuals and families who are victims of personal injury or death from automobile accidents, drunk driving accidents, bicycle and pedestrian accidents, and dog attacks.

In 1993, Denise graduated with Honors from Gustavus Adolphus College. She is also a 1998 Honors graduate of William Mitchell College of Law. She has been practicing exclusively in Personal Injury and No-Fault law since then. Denise has been a faculty member and chair of numerous Continuing Legal Education seminars, particularly on the topics of Personal Injury and No-Fault law.

For six years, Denise served on the Minnesota Second District Ethics Committee as a volunteer investigator of lawyer ethics complaints. In 2016 Denise was appointed to the Minnesota Supreme Court No-Fault Arbitration Standing Committee where she continues to serve.

Denise is a qualified neutral for the American Arbitration Association for No-Fault claims as well as being on a special panel for Auto Glass claims. In that capacity she has served as Arbitrator on hundreds of no-fault and auto glass disputes.

Denise has been named to the Super Lawyers of Minnesota® list annually since 2015, and before that was named a Rising Star® among Minnesota lawyers for six years, as published by Thomson Reuters. Less than 5% of Minnesota's lawyers are honored with these distinctions. She has also been named a lifetime member of the national Million Dollar Advocates Forum®, and has been named to Best Lawyers in America® and Minnesota's Best Lawyers® annually since 2014.

Denise is admitted to practice law in the State of Minnesota and the United States District Court, District of Minnesota. She is a member of the Ramsey County and Minnesota State Bar Associations, and Minnesota Association for Justice.

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**M**innesota requires that all automobiles be insured, and sets certain required minimum limits of coverage. Automobile insurance is designed to protect the public from things that go wrong. This is not only from claims made against you for causing an accident, but also to protect you and your family when someone else causes you injury in a car collision. Having only the minimum coverage may not be enough. It is important that you understand what you have and how it applies, so you can make a good decision about what you need.

**M**innesota is a No-Fault State. What does this mean?

Myth: You are 10% at fault “just for being there.”

Myth: Noone will ever be at-fault for causing your collision.

Fact: Minnesota has a law, called the No-Fault Act, that requires your car insurance company to include protections on your policy for you and your family in case you are injured in a collision, regardless of fault.

## THE BASICS

**W**hen you buy liability insurance for your automobile, you automatically get four coverages in the package (some exceptions will apply, for example with motorcycles):

- Liability (property damage and bodily injury)
- PIP (personal injury protection/no-fault)
- UM (uninsured motorist)
- UIM (underinsured motorist)

You can also add other coverages for yourself, such as collision and comprehensive coverage for damage to your own vehicle.

If you ask your agent to give you the bare minimum, this is what you are likely to get (again, some exceptions will apply):

- Liability - Bodily Injury: \$30,000 per person, \$60,000 per accident

- Liability - Property Damage: \$10,000
- Personal Injury Protection: \$20,000 Medical, \$20,000 Wage Loss/Essential Services
- Uninsured Motorist: \$25,000 per person, \$50,000 per accident
- Underinsured Motorist: \$25,000 per person, \$50,000 per accident

To determine if the minimums are enough for you and your family, you need to understand what these coverages provide, and how they apply.

These limits were originally set in 1975, and only the liability limits were increased slightly in 1985. There have been no further changes to these required limits in over 30 years, despite the rising cost of healthcare and other inflation indicators. Carefully consider whether these decades-old minimums meet your modern-day needs.

**L**iability coverage is for other people to use when you are responsible for causing damage to person or property. This coverage is to provide other people with a sure resource to compensate them for the damage you cause. It is every person's obligation to ensure they have the resources to compensate someone for the full extent of the damage they cause. Adequate insurance is how to accomplish this. However, insurance is also a protection for you, against having your assets attacked to compensate for the damages you cause. Your assets could still be exposed if you do not carry high enough insurance coverage, particularly if your financial circumstances make you a target.

If you crash into an old Escort and cause very minor injuries, the state's minimum coverages may be fine. But, if you total a Lexus and severely injure its occupants, you'd find it necessary to have more coverage than the minimum. If you don't have

enough liability insurance to cover the total damages you cause, your own personal assets (even your business assets if you use your vehicle for business) could be at risk.

**PIP coverage** (personal injury protection/no-fault) has a mandatory minimum coverage of \$20,000 for medical related expenses, and \$20,000 for wage loss and essential services. This coverage is available to you when you are injured in an automobile-related incident - without determining who is at fault. In fact, this coverage is available to you whether you are at fault, another person is at fault, or even if no one is at fault (hitting a deer, for example). It also applies to situations involving the use or maintenance of a vehicle that might not involve a collision (for example, a hand crushed in the door while being closed, a foot run over while parking, an injured back while changing a tire, injury while entering a vehicle, etc).

In the case of a serious accident, this \$40,000 combined minimum coverage could be rather insufficient. Fortunately, you can purchase more PIP coverage than these minimums.

For example, if you have more than one vehicle insured on the same policy, you can choose to “stack” the PIP coverages, usually at only a slight increase in premiums, which multiplies the base limits by the number of vehicles being stacked. If you were injured in a collision, and had three vehicles on the same policy, then with PIP stacking you would have \$60,000 available for medical expenses, and a separate \$60,000 available for wage loss and essential services for that collision (per person injured).

But, even if you only have one vehicle on the policy or choose not to stack coverages, you can still purchase additional coverage to increase one or both parts of your PIP coverage. You can also avoid paying for too much coverage, in the case

where you are over 65 years old, or 60 years old and retired receiving a pension, by waiving the PIP coverage for wage loss.

**Uninsured (UM) coverage** is to protect you and your family for personal injury damages when the person who is at-fault did not have insurance coverage of their own, or if that person cannot be identified. This includes coverage to compensate for medical expenses and lost wages beyond what your PIP coverage provides, pain and suffering, damage to earning capacity, future medical expenses, etc.

**Underinsured (UIM) coverage** protects you and your family in the case of an at-fault party who had insufficient liability coverage to compensate you for the full extent of these same types of damages. If the at-fault party causes you damages that exceed the amount of liability coverage on their policy, your UIM coverage is intended to contribute as a second tier of coverage to bring you closer to full compensation for your injuries and losses.

You are in a position to set the limits for these UM/UIM coverages, just as you select the amount of liability coverage you choose to carry on your policy. When selecting these limits, you will want to consider that this is coverage available to you and your family if you are seriously injured or killed in a collision. The greater the limits you choose, the more protection you have for yourself. The UM limits are paired with the UIM limits, in the sense that whatever you choose for one is the same that will be set for the other. Furthermore, most insurers do not allow you to purchase more in UM/UIM coverage for yourself than you carry in liability coverage for others. Therefore, if you want to have \$250,000 in UM/UIM coverage, you must also raise your liability coverage to \$250,000.

**Collision and comprehensive coverage** can also be added to a policy. Collision covers repair or replacement of your vehicle when the damage is a result of some form of collision (an accident with another vehicle, hitting a deer, running into the garage door, etc). This coverage is also available when the collision is caused by a person who is without insurance, or if there is a dispute about who caused a collision. Comprehensive covers other damage to your vehicle, such as fire or hail. If access to a rental car during a long repair period is a necessity for you, be sure to include that in your coverage as well.

If you live paycheck to paycheck, either set aside the money to cover your deductible or carry a deductible that you can afford. If you set a deductible that is too high, you might find yourself in a position where you cannot get your vehicle repaired, simply because you cannot come up with the funds for your deductible in order to proceed with repairs. People in this situation find themselves in a vicious cycle, as they cannot get to work without their vehicle, but they cannot get their vehicle fixed without earning their wages. Even if you are a careful driver, there is no guarantee that you will never need this coverage.



## **R**eview your policy and assess your coverage.

Be sure you have all vehicles owned by you and your family members insured under the same policy and listed with the same Named Insureds for each car. This is especially important if you have drivers who are not owners (ie: high school or college students). If you do not have them listed specifically as “Named Insureds,” you may find that they are without Personal

Injury Protection or Uninsured/UnderInsured motorist coverage, even if your policy otherwise carries it.

The following are general recommendations. First, elect to stack your PIP coverage and increase your basic coverages to a minimum of \$100,000 in Liability/ Uninsured/ UnderInsured motorist coverage, preferably at least \$250,000, and at least \$50,000 for property damage. If you have any high wage earners in your family, your basic coverages should be even higher, and you should consider an umbrella policy. You should review your options with your insurance agent, balancing your needs with what coverages you can afford. If you are injured, you should review your coverage, rights, and potential claims with a qualified Minnesota Personal Injury Attorney.



***Every Family is Different.***

***Whether your family is young, mature, big or small -  
be sure your policy fits your family and your lifestyle.***

### **FAQ'S ABOUT NO-FAULT BENEFITS**

**Q:     *What is No-Fault Insurance?***

**A:**     No-Fault Insurance pays for certain expenses you incur as a result of injuries suffered from an automobile accident. These expenses can be for medical and chiropractic bills, lost wages, replacement/essential services, and several other types of losses.

**Q: How is No-Fault Different from Bodily Injury Liability Coverage?**

**A:** All Minnesota motor vehicles are required to have not only liability coverage, but also No-Fault insurance (with exceptions, such as motorcycles).

For No-Fault benefits, it does not matter who caused the accident; your basic economic losses, such as medical expenses and lost wages, are covered under your own policy (though see the question below regarding who pays no-fault benefits) even if someone else is at fault.

Bodily Injury Liability Insurance covers a driver's responsibilities for causing an accident with injuries. People who are seriously injured in an automobile collision may recover from the at-fault driver's bodily injury liability coverage for losses that haven't already been paid by no-fault insurance, such as pain, suffering, disability, additional medical expenses, additional lost income, and other losses. If the at-fault party does not have auto insurance, you may look to another policy that provides uninsured motorist (UM) coverage (which policy applies will vary depending upon the situation).

**Q: What are the minimums required for No-Fault Coverage?**

**A:** In Minnesota, the minimum coverage required for no-fault medical expense benefits is \$20,000 per person. This covers essentially every type of treatment available, and an injured person may choose his or her own doctors. The insurer must also pay for transportation costs including

mileage to and from treatment, as well as for prescription medication.

There is also a minimum required coverage of \$20,000 per person in no-fault work loss and replacement service benefits. This covers:

- Wage Loss - 85% of gross lost income up to \$500 per week. This includes lost wages while receiving treatment.
- Replacement Services - Up to \$200 per week (starting one week after the accident) to pay for household needs such as housecleaning, snow removal, and yard work.
- Death Benefits - Lost wages up to \$500 per week, replacement services up to \$200 per week, and funeral costs up to \$5,000.

The option of stacking coverage, when there is more than one vehicle on the policy, will multiply each of the above minimums, including the weekly caps, by the number of vehicles insured.

**Q: *Who pays your No-Fault Benefits?***

**A:** Generally, an injured person collects no-fault benefits from his own insurance company, even if the collision was caused by someone else, and even if he was not in his own vehicle. If an injured person does not have auto insurance coverage of his own, he can receive no-fault benefits from another relative with whom he lives, if that relative owns a car and has auto insurance. If an injured person does not live with anyone who has auto insurance and also does not have auto insurance of his own, he can receive no-fault benefits under the policy of the vehicle he was occupying at the time of the collision (or, if a pedestrian, by the car that struck him).

If none of these options is available, a person can often apply to have coverage assigned under the Minnesota Assigned Claims Plan.

There are numerous exceptions to these general rules, which should be reviewed with a qualified Minnesota Personal Injury Attorney who can factor in all of the case particulars and provide information on the proper no-fault insurance provider.

### **BENEFITS AVAILABLE AFTER AN ACCIDENT**

**F**ollowing an automobile accident, you are likely to have many questions and needs. Here is a brief overview of some benefits that may be available to you under Minnesota's Laws. Whether and how each of these apply to your situation should be reviewed with a qualified Minnesota Personal Injury Attorney.

#### **No-Fault Payment of Medical Bills.**

Under Minnesota Law, No-Fault "Medical" expenses are covered up to a minimum of \$20,000. If your own automobile insurance covers more than one vehicle, you may have additional coverage called "stacking." No-Fault medical coverage pays for all types of treatment received, from ambulance and ER visits, to seeing your general medical doctor and receiving physical therapy, or seeing a chiropractor and receiving therapeutic massage therapy. Items like ice packs, bandages, over the counter medications, supplements, and wraps are not typically covered. No-Fault medical also provides reimbursement for prescriptions and mileage incurred in receiving treatment. You may be treated by any medical doctor, chiropractor, or other medical professional you choose. There are no networks or referrals restricting your choices.

## **N**o-Fault Rehabilitation Services.

If you are disabled from work, and your doctor recommends job rehabilitation assistance, your no-fault coverage should provide you with a professional job seeking counselor, education and/or retraining. These benefits come out of the \$20,000 medical limit, as do other rehabilitation type items such as medically necessitated home remodeling or adaptations.

## **N**o-Fault Wage Loss.

Under Minnesota Law, No-Fault "Wage Loss" and "Replacement Service" expenses are covered up to a joint minimum of \$20,000. If you have "stacking," you will have additional coverage. If your doctor disables you entirely or even partially from work, or if you miss work to attend medical appointments, you may receive 85% of your lost wages, up to a weekly maximum of \$500. If you have "stacking" your weekly maximum will be higher. This wage loss benefit is available to replace lost wages even if you take paid time off (PTO), if that time cannot be taken again later (ie: if you use it, you lose it).

## **N**o-Fault Essential Services.

If your doctors disable you from your routine household tasks, you may be reimbursed the expense of hiring someone else to do them for you. Examples of these types of services are house cleaning, snow removal, and lawn care. If you are the "primary homemaker" and are disabled from your homemaking duties (regardless of whether you are employed outside the home as well), you may be reimbursed the "reasonable value" of your lost services, without incurring the expense of hiring someone else to do them for you. The weekly maximum reimbursed is \$200, although "stacking" will increase this amount.

## **Pain and Suffering Compensation.**

If another person is at-fault, and you have met one of Minnesota's threshold requirements, you may make a claim against the at-fault person for your pain and suffering. Minnesota has set these thresholds to keep frivolous lawsuits from clogging the system, and to prevent unwarranted claims against insurance policies or individuals' assets.

In order to have the right to make a claim against the at-fault party for pain and suffering, you must meet one of the following threshold requirements:

1. Medical expenses in excess of \$4,000, not including diagnostic tests such as X-rays;
2. Permanent injury;
3. Permanent disfigurement;
4. Disability for 60 days or more; or
5. Death.

You may not necessarily know right away if one of these thresholds will apply to your situation. Minnesota has several different limitation periods (statute of limitations) depending on the specific circumstances of the case. If your case is not served and/or filed within the applicable statute of limitation period, it will be automatically barred forever, simply by the passage of time. Minnesota has a six year limitation period for negligence, which is often the primary claim to bring against an at-fault driver for causing a collision. However, many exceptions could apply, which might result in statute of limitations or mandatory notice periods significantly shorter, some even less than a year. An injured person should promptly consult with a qualified Minnesota Personal Injury Attorney to explore all claims and limitation periods, so as not to jeopardize any rights.

## **P**roperty Damage Recovery.

If another person is at-fault, their insurer should pay for all of the property damage including deductibles, rental and other reasonably related out-of-pocket expenses. This includes damage not only to the vehicle, but also to personal property items such as clothing cut away by emergency personnel, infant/child car seat replacement, personal items inside the vehicle such as CDs or groceries, extra items added onto the vehicle that cannot be salvaged such as a bed liner or car starter, etc.

### **WHAT TO DO IF YOU'RE INVOLVED IN AN ACCIDENT**

**U**nless your injuries are obvious following an accident, you may not know until well after you've left the scene that you've been injured (often injuries are masked by adrenaline). Also, even if the other driver presents an insurance card, there is no guarantee right then and there that the insurance is actually in force on that day. For your own protection, there are a few things you should do immediately.

1. Call the Police and request their assistance at the scene
2. Request an ambulance if your injuries are obvious at the scene - don't take chances with your health by brushing it off
3. Exchange information with the other party (name, address and phone, insurance information)
4. Get a plate number and ask to see their insurance card if they have one (taking a clear picture of these items can save some time and reduce errors with written notes)
5. Obtain witness information
6. Promptly fill out the form the police give you, if any, and send it in as directed on the form
7. If you keep a disposable or other camera in your vehicle, or have a camera on your phone, take photos at the

- scene (license plates, damage to all vehicles, scene layout/conditions, physical evidence such as skid marks)
8. If you have injuries, seek prompt medical attention
  9. Report the claim to your insurance company

These protections are for you to be certain that you are treated fairly - either for your own injuries or property damage, or in the event that another driver makes false claims or is without insurance. Because you cannot predict what will become of the situation after you leave the scene, these precautions are worth the effort, just in case.

### **OTHER COMMON ISSUES REGARDING AUTOMOBILE INSURANCE COVERAGE**

## **H**ow Are Motorcycles Treated Differently from Cars under Minnesota's No-Fault Law?

Strange as it may sound, motorcycles are excluded from the definition of a "motor vehicle." Police cars are as well, as are snowmobiles, ATVs, and boats. Only a motor vehicle fitting the definition in Minnesota's No-Fault law is required to carry No-Fault, Uninsured and Under-Insured Motorist coverage on its insurance policy.

As a result, if you were to ask your agent for the minimum coverage on your motorcycle, you would not be given No-Fault, UM or UIM coverage. Unless you specifically add it to your motorcycle policy, you and your passengers will not have any No-Fault coverage, even if you have it on another vehicle. You should make a point of adding No-Fault/UM/UIM coverage to your motorcycle insurance policy, both for your protection as well as for that of your passengers.

## **W**hat is an Umbrella policy and what does it cover?

Your auto, home, recreational vehicle and boat policies provide primary protection. An umbrella policy extends coverage by adding a layer of protection over and above the primary limits. Should a loss exhaust your primary coverage, the umbrella policy would pay more toward covered damages, up to your umbrella's policy limit. Some insurance companies' umbrella policies include uninsured (UM) and underinsured motorist (UIM) coverage in the claims over which it extends. If it does, then you and your family have additional protection for your own injuries or death when needing to access your UM and UIM benefits. You should carefully review this with your agent, to clearly understand whether your umbrella policy extends beyond mere liability policies and adds the protection for your family's health and welfare when serious injury or death necessitate access to greater UM/UIM coverage.

## **W**ill a No-Fault Claim Cause My Premiums to Go Up?

As long as you are with the same insurer, that insurer is not allowed to raise your premiums simply because they have paid out on a no-fault, uninsured, or under-insured motorist claim. They are only permitted to raise premiums based upon claims paid for your own fault or negligence.

So, if you make a claim for no-fault benefits from an accident where you ran into a parked car because you were busy talking on your cell phone, they can assess points to consider raising your premiums. But, if your claim is a result of someone else rear-ending you while

you were lawfully stopped at a red light, they may not. Unfortunately, if you look for a new insurer, there is nothing to prevent the new insurer from considering all payments made by prior insurers, fault-based or otherwise, when setting your premium. However, it would be worth your effort to have the new insurer review the difference between the fault-based and non-fault-based claims paid as they may adjust accordingly.

## **W**hat Happens If I Have an Accident in Another State?

If you have an accident anywhere in the United States, a United States possession, or in Canada, and are a Minnesota Insured or driving/occupying a Minnesota insured vehicle, then you should be entitled to Minnesota No-Fault benefits, even though the accident did not take place in Minnesota. Exceptions apply for certain business and government vehicles.

Whether or not you can make a claim against the at-fault party, and for what damages, will depend on how the accident occurred, and where. The time to bring a claim varies by state, with some states' statute of limitations periods as short as one year. However, exceptions may apply that make certain notice or limitation periods even shorter than this, so immediate action should be taken to consult with an attorney to protect your rights.

## **W**hat If Someone from Another State Causes an Accident Here in Minnesota?

Not all states require vehicle insurance, although Minnesota does. If someone from another state causes an accident to you here in Minnesota, a number of

factors will need to be considered. Your right to No-Fault benefits will not be affected by this detail.

If the at-fault party has no insurance at all, you might turn to your own collision and Uninsured Motorist coverage. Or, if their insurance is less than Minnesota's minimum required \$30,000, they are technically considered uninsured against bodily injury by Minnesota's laws and you might turn to your own Uninsured Motorist coverage. If they have sufficient insurance, then the other details that follow remain generally the same as if the person were from Minnesota.

## **W**hat If There Is a Hit and Run?

Hit and run accidents typically happen for one of two reasons. The person who caused the accident and fled the scene may not have realized their part in the accident (for instance if they cut you off and cause you to swerve and hit a cement barrier to miss them). This is called a phantom vehicle, since there was no contact, and can permit you to bring a claim under your Uninsured Motorist policy for your injuries.

The more common reason for someone to flee the scene is that they are more concerned over an arrest, typically for DUI, than for leaving the scene of an accident (or, unfortunately, that they are too intoxicated to realize they should stop or even that they just caused an accident). Do not be tempted to follow someone fleeing a scene. Car chases are dangerous, and drivers under the influence are unpredictable. You could be putting yourself even more in harms way.

Instead, if at all possible, get a plate number and identifying information on both the driver and the vehicle. Check with witnesses who may have gotten this information as well. Notify the police immediately, and cooperate in their investigation. Notify your own insurance company, as unless the fleeing driver is located you may be entitled to bring a claim under your Uninsured Motorist policy for your injuries.

If a driver stops, then leaves the scene, and cannot later be found, you may be prevented from bringing an Uninsured Motorist claim unless you did everything possible to identify this person (vehicle identification, driver's name and contact information, driver's license information, etc). This is a fact specific situation, and should be reviewed with a qualified Minnesota Personal Injury Attorney.

## **D**o I Need to Hire an Attorney? If So, When?

While there is no requirement to have an attorney when you've been injured in a car accident, it is a good idea to consult with a qualified Minnesota Personal Injury Attorney right away so that evidence can be preserved. More and more often, police who are called to the scene decide not to file a report. Even when a report is done, there might be critical evidence that could be lost if not acted upon quickly. Skid marks disappear, vehicles get repaired, witnesses forget details or move, bruises and cuts heal, etc. A dispute about who caused the collision can become a big battle later, but even more so if evidence is lost. Though immediate investigation is essential in all cases, it is even more critical when there is a death, disabling injury, or when involving an intoxicated driver or commercial vehicle.

In addition to preserving evidence, it is important to have an attorney representing you early in your case to protect your rights. Insurance companies may try to settle cases with you before you really should do so. They will also ask you to provide them with information and access to your personal and private data, including medical history. Some of this will be required of you, but not necessarily all. You will need an attorney who is familiar with the field of personal injury law to review your case and advise you of your rights, to protect you from harassment and exposure, and to counsel you on what you need to do to properly bring your claims.

Of interest, internal studies done by one major insurance company were court ordered to be produced and therefore became public. Those studies revealed they can save an estimated 50% with unrepresented individuals. Some companies have created training sessions with scripts for dealing with unrepresented claimants. Their reports identify a goal of “saving” \$500 Million in personal injury claims by resolving claims with people before they hire attorneys. With this as their internal policy and practices, having an attorney is a way to protect yourself financially.

## **M**y No-Fault Insurance Company Is Paying My Bills. Why Would I Need an Attorney?

Unfortunately, you and your doctors may not always agree with your insurance company about when you are healed and done treating for your injuries. More often than not, the insurance company will challenge your treatment by sending you to a doctor of their choosing and using that evaluation to deny ongoing benefits. When this happens, you have a right to dispute their

decision by bringing them to arbitration or court. Although you are not required to have an attorney in arbitration or court, there are many legal issues that come up in these situations that make it important to have someone representing you and advocating for your rights. The insurance company will have an attorney representing them in arbitration. Not having one on your side could put you at a significant disadvantage.

## **W**hy Would an Insurance Company Stop Paying My Benefits?

If you're getting your no-fault benefits from your own insurance company, you've paid premiums to get the coverage. Maybe you've even paid them for years without ever before making a claim. So, why would your company refuse to pay your claims now? It is a basic cost-savings business decision for them.

At some point, your no-fault insurance company may challenge your ongoing treatment and/or disability by sending you to a doctor that they choose, which they call an Independent Medical Examination (IME). The examiner may disagree with the findings and recommendations of your own doctors. Unfortunately, because the same sampling of doctors tend to be used repeatedly by the insurance industry, the reports tend to come back adversarial, giving the insurance company an excuse to stop paying benefits.

Certainly insurers also identify fraudulent claims in this process, but more often than not they are prematurely discontinuing benefits of people with legitimate claims. What happens all too often is that an insurer will deny the claims, and the person needing benefits 'goes away'

without fighting the decision. Only a small percentage of denied claimants dispute the decision, and seek an attorney to fight for what's right. The insurers in turn save thousands of dollars per claim, and millions per year, by utilizing this tactic.

## **W**hat Happens When No-Fault Benefits Are Discontinued?

When the No-Fault insurer discontinues, denies, or otherwise refuses to pay your benefits, you have a right to challenge that decision. If your disputed claim is \$10,000 or less (or if you choose to waive some of the claim to keep it under that mark), you may file arbitration against them.

Minnesota No-Fault Arbitration is designed to provide you and your insurance company with a method of resolving your differences faster and more economically than litigation. Arbitration is a less formal and much quicker process than litigation. A dispute is given to a neutral arbitrator, and each party is given the opportunity to present its side of the dispute at a scheduled hearing. After the hearing, the arbitrator determines how the matter is to be resolved.

The arbitration process is initiated by the filing of a Petition for Arbitration with the American Arbitration Association. That can be done either once your benefits have been denied by the insurance company, or if the insurance company fails to pay benefits within thirty days after a claim has been presented to them.

The arbitration date will usually be scheduled within 4-6 months from the date of filing. This is to give both sides an opportunity to gather information and prepare for

the hearing. This is much quicker than a lawsuit which in the metro area can take 1-2 years to come up for trial.

An Award is the arbitrator's legally binding decision made after an arbitration hearing. The arbitrator has the authority to award the total amount claimed, a partial amount, or deny the entire claim, based upon the evidence and arguments presented.

## **H**ow Long Does A Personal Injury Case Take To Pursue?

It depends. If a person's injuries resolve, but they have met one of the thresholds entitling them to bring a claim, the case can be resolved earlier. If the person has permanent or long-term injuries, it is likely to be at least a year after the accident before the treating doctor can give an opinion about the full extent of the injuries, and what the future holds for the injured person. Even after a year, a person might be going through further diagnostic testing, or seeing specialists to gain a full understanding of their injuries and what can be done for them. It is risky to try settling a case when there are still unanswered questions about the full extent of injuries. This means that how long it takes to pursue a case depends on the person, their injuries, and their recovery. However, most cases are ready to begin the negotiation process at around one year after the accident occurred.

Whether the case settles as an insurance claim or not also depends. If there is a liability dispute (ie: whose fault was the accident), or a dispute about the nature and extent of injuries (ie: did the accident actually cause the claimed injuries, and are they really as bad as they are claimed to be), the claim may not settle, and a lawsuit will have to be started. Sometimes, it depends

on which insurance companies and adjusters are involved, and what the expectations are of the person seeking compensation. The statute of limitations must be considered, so that lawsuits are started in a timely manner. If a lawsuit is started, then the case is considered "in litigation." Cases in litigation may take another year or two to resolve, which would typically be through settlement, arbitration, or jury verdict.

## **W**hat Is the Litigation Process, and What Does it Involve?

The litigation process starts with serving a Summons and Complaint on the at-fault parties. The person starting a personal injury lawsuit is called the Plaintiff. The people being sued for causing the injuries are called Defendants. Typically, the defendants have insurance to cover the claims, in which case the insurer hires an attorney to handle the defense.

Once the Summons and Complaint are served, the parties engage in a process called "Discovery." The Discovery process involves a formal exchange of information. You would be required to actively participate in this process by answering Interrogatories, attending depositions, and attending medical examinations. All of these things must be accomplished before a pretrial and trial will be held. Once Discovery has been completed, and before a pretrial and trial, parties often revisit settlement discussions. Settlement discussions are sometimes informal, but more often are done by way of mediation, arbitration, or a settlement conference (processes which are part of Alternative Dispute Resolution/ADR).

Interrogatories are written questions which either attorney may submit, and which have to be answered completely, honestly, and in writing under oath, within 30 days of being received. Once completed, the answering party is required to sign them, under oath in front of a notary public, swearing that they are truthful.

A deposition is typically the next event to occur during the discovery process. A discovery deposition is the sworn testimony of a party or witness in the presence of attorneys for both the plaintiff and defendant. This takes place before a court reporter who takes down the testimony.

The defendant will also likely schedule the plaintiff for an examination by a physician of their choosing, even if he has already attended an examination for his no-fault insurer. Their defense will pay the costs of this examination, and a report will be given to the insurance company and the defense attorney about the doctor's findings and opinions regarding the Plaintiff's injuries.

Once discovery and ADR have been completed, the case will proceed to trial. Trial in an automobile accident case takes an average of 3 days. A jury is picked, and both parties are given the opportunity to present evidence to support their view of the case. Once all the evidence is in, the jury deliberates and returns a verdict itemizing the damages awarded, if any. Personal injury claims can include requests for compensation for past medical expenses, lost wages, and pain and suffering, and for future medical expenses, loss of earning ability, and pain and suffering.

The litigation process is costly. In order to properly prepare a claim to be presented to a jury, all medical

records, both following the incident and prior to it, must be collected, and the assistance of expert witnesses must be obtained. Expenses typically include the cost of obtaining records and reports, depositions, examinations, ADR, court and service-of-process fees, and expert witness fees. Expenses in an average case total \$3,000-\$5,000 by the conclusion of trial, though in a case needing the use of more than one expert or other unique exhibits these costs go up significantly.

## **H**ow Much Does It Cost to Consult With An Attorney About An Automobile Collision?

Typically, nothing. Most personal injury attorneys provide a free consultation. Most personal injury attorneys work on a contingent fee basis, meaning that they are paid a percentage of what they can recover for you, if and when there is a settlement, award, or verdict.

## **H**ow Can I Verify the Credentials of an Attorney?

The following are several sources available to verify the credentials of a Minnesota Personal Injury Attorney.

- Minnesota Attorney License Registration:  
<http://mars.courts.state.mn.us/>
- Lawyers Board of Professional Responsibility:  
<http://lprb.mncourts.gov/LawyerSearch>
- Minnesota Association for Justice:  
<http://www.mnaj.org>
- Avvo Rating for Lawyers:  
<https://www.avvo.com>
- SuperLawyers and Rising Stars:  
<http://www.superlawyers.com/minnesota/>

## COVERAGE EXAMPLES

The following are examples of real cases - real injuries suffered by real people - and how various parts of an insurance policy applied to cover their damages.

### EXAMPLE #1

A 42 year old woman, Mary, was on her way to work one evening, driving in the left lane of Highway 94 when another vehicle came onto the road from the left, from Highway 280. The other vehicle raced up alongside of her, and cut in front of her. In an effort to avoid a collision with this vehicle, Mary braked and veered her vehicle. She lost control, and struck the cement median and a light pole. The other vehicle left the scene, and was never identified. Mary brought her claim against her own insurance company for Uninsured Motorist (UM) benefits (for the “phantom vehicle”).

Mary suffered a T12 compression fracture in her mid back, and damage to the disc above that fracture. Her doctor determined that the ongoing pain she continued to suffer on a daily basis was a result of the damaged disc, which will continue to degenerate as she ages.

Her own insurance company hired a doctor to testify against her, and even that doctor admitted that she suffered a painful injury in this crash. Mary had to give up overnight work as a retail stocker, and switch to the day shift to have lighter duty work that she could tolerate. As a result, she lost her overnight shift differential pay.

Her UM insurance company denied her claim by blaming her for causing the collision. They also questioned the severity of her injuries. The best offer before trial was \$4,000.

The case was tried in Hennepin County. The jury awarded her \$113,460.64 for the damages she suffered in this crash, and found the other vehicle was 70% at fault for cutting her off and forcing her to take evasive maneuvers. She was therefore entitled to recover \$79,422.45 (70% of the total damages).

Damages: \$79,422.45

Coverage: \$50,000 Uninsured Motorist

She was only able to collect her \$50,000 UM policy limits, as she did not have a higher limit set on her own policy. Had she bought better coverage for herself, she would not have been left undercompensated.

### **EXAMPLE #2**

A 25 year old man, Charlie, was injured while riding his motorcycle, when a vehicle pulled out in front of him and caused a collision. The other driver had run a stop sign and failed to yield the right of way to the motorcyclist. The other driver admitted she never saw the motorcyclist until the motorcycle crashed into the car and Charlie went flying through the air.

Charlie suffered a head injury, fractured right olecranon process (elbow), and soft tissue neck and back injuries. Surgery to repair the fracture using hardware was required. He was in a sling for several weeks, and went through painful physical therapy to regain motion of his arm. He received chiropractic care for his headaches and neck and back injuries. His head injury resulted in a mild brain injury. He suffered a loss of ability to concentrate and express himself, and problems with short-term memory, which caused him difficulties in his work as a sales representative at a tire store.

Charlie was without no-fault or underinsured coverage on his motorcycle. Therefore, the only available funds were from the

at-fault driver and her insurer. Charlie's medical expenses were more than \$43,000. His total damages were conservatively estimated by a neutral fact-finder at over \$200,000. The at-fault driver carried only \$100,000 in coverage.

Damages: Over \$200,000 (\$43,000 in medical)  
Coverage: \$100,000 Driver's Liability

Had Charlie covered his motorcycle with no-fault and underinsured motorist coverage, he may have had enough coverage all around to fully compensate him for his losses.

### **EXAMPLE #3**

A 17 year old boy, Michael, was severely injured in a car crash on a rural highway. He was riding with a friend, on their way to technical school. His driver barely slowed for a stop sign before crossing over a rural highway. A large dump truck that was traveling on the highway they were crossing was unable to stop or avoid impact. The truck careened into the car, pushing it nearly 300 feet, and itself leaving nearly 150 feet of skid. The driver of the car was killed.

Michael sustained a severe brain injury and other internal injuries. He was in a coma for nearly a month, and developed spasticity which led to disabling spastic quadriplegia. Nearly two years after the crash, he was still unable to walk or talk, and required 24/7 care for all needs. His medical expenses in the first two years were near \$1.5 Million, most of it paid by the family's health insurer which expected 100% reimbursement. His total damages were many millions of dollars.

The driver of Michael's car, who had the majority of fault, carried only \$50,000 in liability coverage. Given the massive amount of damage caused to Michael, this was clearly not enough. The next place to look for coverage was the policy owned by Michael's family on their own automobiles. They

owned a \$100,000 underinsured motorist (UIM) policy, and a basic \$20,000 medical/ \$20,000 wage loss personal injury protection (PIP) policy. Still this was not enough. Had the family carried higher UM/UIM and PIP limits, they would have had more funds available to compensate for the medical expenses and future care required, not to mention the pain and suffering with which Michael will live for the rest of his life.

An accident reconstruction revealed that the truck had been exceeding the speed limit by at least 5 mph. According to the reconstruction report, had the truck been traveling the lawful speed limit, the vehicles would have missed impact by 2 feet. Because commercial vehicles have such huge mass, the destruction they cause in a collision can be catastrophic, just as it was for Michael and his driver. Knowing this, there are laws that put a higher duty on truck drivers to protect the public. Exceeding the speed limit by 5 mph is much more significant when done by a commercial vehicle than a standard sedan. As a result, in this situation the \$1 Million in coverage on the truck was surrendered to Michael. The health insurer was satisfied with only \$4,600 repayment.

Damages:	Many Millions (\$1.5M in medical in 2 years)
Coverage:	\$20,000 Medical/\$20,000 Wage Loss PIP \$50,000 Car Driver's Liability \$100,000 Underinsured Motorist \$1M Truck Driver's Liability

In this tragic situation, with limited resources, Michael received some compensation, though not nearly enough to cover all of his past expenses nor future anticipated expenses. Had his own family or the driver of his car carried larger policies, he would be better cared for into his future.

## SOME FINAL COMMENTS

- If you are injured, seek appropriate treatment immediately.
- Choose a doctor with whom you feel comfortable, and ideally one recommended to you by a friend or relative or someone else you trust.
- Use caution when dealing with insurance companies. Even your own insurance company may turn on you. Just because they are 'your' company does not mean they are on your side or interested in protecting your rights. And even though your agent may stand by you, the internal claims department may not.
- Choose an aggressive but honest attorney who will fight for your rights and is not afraid to arbitrate your case or go to trial if needed.



***Take care of yourself and your family. Don't be strong-armed by people and companies with more experience than you.***

***Purchase adequate insurance, drive carefully, and consult a qualified Personal Injury Attorney following an accident.***



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[www.fullerton-law.com](http://www.fullerton-law.com)