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## State No Fault Systems - Attorney's Guide to Statutory Provisions - The Statutory Architecture of State (No Fault Systems Survey)

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# **Survey**

## **State No Fault Systems — Attorney's Guide to Statutory Provisions**

### **The Statutory Architecture of State No Fault Systems**

**JOSEPHINE Y. KING†**

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## INTRODUCTION

A review of the statutory architecture of each state's no fault system provides the point of departure for understanding the recent development of no fault law in automobile accident reparations. This study will present the basic design for each jurisdiction qualifying as a no fault state (Group I) or a quasi or limited no fault state (Group II). Group I systems incorporate the four essentials: (a) required insurance or security for ownership or operation of a motor vehicle; (b) first party benefits for basic economic loss; (c) tort immunity for economic loss to the extent that the victim's expenses are covered by basic reparations; (d) limitation on tort actions for noneconomic loss. Group II states do not modify the traditional tort system by granting tort immunities or by imposing threshold limitations on tort actions. Group II states simply prescribe a somewhat expanded version of first party benefits, which have been customarily provided in the Medical Payments coverage section of the standard family automobile policy.

The primary features of each state's system are organized to address these questions:

1. What are the state's automobile insurance requirements?
2. What vehicles are covered by the no fault law? What vehicles are excluded?
3. What uses are covered by the no fault law? What uses are excluded?
4. Which persons are covered by the no fault law? Who is excluded?
5. What is the general limit on first party benefits? What are the general requirements for initiating claims for the benefits?
6. What are the medical benefits?
7. What are the work loss benefits?
8. What are the survivor benefits?
9. What are the substitute services benefits?
10. What is the reimbursement for funeral expenses?
11. What setoffs must be deducted from first party benefits?
12. Does the insurer have a right of subrogation?
13. What are the limitations on tort actions?
14. What tort immunity is granted?
15. Is arbitration of some claims required?
16. Does the statute provide for out-of-state accidents by residents or in-state accidents by nonresidents?

17. Does the statute contain unique features?

Not all of these topics are treated in each of the statutes, and even where a statute does speak, it may speak cryptically, incompletely, or vaguely. This necessitates recourse to judicial construction or interpretation of some provisions of the no fault act. The summaries that follow are designed to provide a quick reference and overview of the variety of state legislative judgments pertaining to the basic statutory framework for no fault systems.

Group I statutes are treated first. These plans incorporate the elements necessary to qualify as a no fault reparations scheme. However, even Group I states do not present complete departures from traditional tort law; they permit tort actions for general (pain and suffering) damages where the claimant meets a verbal (serious injury) threshold or a monetary threshold. They also permit tort actions where medical expenses or wage losses exceed no fault benefits for those categories. Nonetheless, these plans are identified as no fault schemes although they combine some elements of common law tort recovery.

On the other hand, the Group II states diverge substantially from a pure no fault concept. They possess only one of the major requirements — reimbursement without fault up to modest limits of certain basic economic losses. The statutory framework of these quasi no fault schemes is included to achieve coverage of all the states which may be described, however loosely, as no fault jurisdictions. The quasi systems shed no light on issues of tort immunity, verbal and monetary prerequisites to an action for general damages or any other modification of traditional tort law. However, the quasi systems must deal with questions common to entitlement for first party benefits and therefore contribute to the jurisprudence of current accident reparations law.

The consideration of Group I and Group II statutes proceeds in alphabetical order without any imposed ranking of systems. However, it will be quite apparent that the no fault concept, as implemented in our federal system, embraces a great variety of legislative interpretations, each expressed in the state's own statute.

## GROUP I STATES

## COLORADO

*Insurance Requirements* — Colorado requires security after an accident, by policy or bond subject to a limit of \$35,000.<sup>1</sup> The Colorado Auto Accident Reparations Act of 1973<sup>2</sup> mandates liability coverage of \$25,000/\$50,000/\$15,000<sup>3</sup> as well as no fault benefits. Liability insurance policies must include uninsured and under insured motorist coverage unless rejected in writing by the named insured.<sup>4</sup>

*Covered Vehicles* — Vehicles encompassed by the no fault plan are those which must be registered and licensed in the state and designed to be propelled by an engine. Excluded vehicles are motorcycles, motorscooters, minibikes, snowmobiles, motorized bicycles and vehicles for use off the road or on rails.<sup>5</sup>

*Covered Persons* — The named insured, his or her relatives residing in the same household and permitted users of the insured vehicle are "insured" persons.<sup>6</sup> Persons occupying the insured vehicle with consent of the insured and pedestrians injured in an accident involving the insured vehicle are covered. The named insured and relatives are not covered if their injury results from use of their own, uninsured vehicles.<sup>7</sup>

Excluded persons are converters and those intentionally causing their injury.<sup>8</sup>

*Covered Uses* — The Act speaks only in terms of accidental injury arising out of the use or operation of a motor vehicle.

*Benefits, Generally* — No aggregate limit is stated; each class of benefits carries its own maximum. In addition to the required coverages, an insurer must offer and the named insurer

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1. COLO. REV. STAT. § 42-7-301 (1973 & Supp. 1982).

2. *Id.* § 10-4-701 to -723 (1973 & Supp. 1982 & as amended 1983).

3. *Id.* § 10-4-706(1)(a); see also *id.* § 42-7-103(14).

4. *Id.* § 10-4-609.

5. *Id.* § 10-4-703(8).

6. *Id.* § 10-4-703(7).

7. *Id.* § 10-4-707(1)(a), (c).

8. *Id.* § 10-4-712.

may elect:

- (a) compensation for medical expenses without a monetary or time limitation;
- (b) work loss benefits of eighty-five percent of loss of gross income per week;
- (c) an aggregate of \$100,000 for medical and rehabilitation costs;
- (d) no fault collision coverage for damage to insured motor vehicles with deductibles of \$50 to \$250.<sup>9</sup>

Benefits are overdue if not paid within thirty days of proof of loss and bear interest at the rate of eighteen percent per annum. A claimant may sue in contract for overdue benefits and if successful, is entitled to reasonable attorney's fees.<sup>10</sup>

*Medical Benefits* — A limit of \$25,000 applies to payment of reasonable expenses for medical, chiropractic, hospital, nursing, dental, x-ray, ambulance, prosthetic services and religious healing, performed within three years of the accident.

A separate category of benefits is established for rehabilitation and occupational training. Rehabilitation benefits are payable up to \$25,000 over a five year period following the accident.<sup>11</sup>

*Work Loss Benefits* — Benefits cover 100% of the first \$125 of lost gross income and may continue for fifty-two weeks.<sup>12</sup> The maximum, therefore, is \$6500 for loss of wages or income.

*Substitute Services* — Expenses up to \$15 per day for fifty-two weeks are reimbursable for essential services the accident victim would have performed without payment.<sup>13</sup>

*Death Benefits* — Colorado does not provide for payment to survivors. Loss of income benefits cease at the death of the injured worker. His estate is entitled to compensation of \$1000.<sup>14</sup>

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9. *Id.* § 10-4-710.

10. *Id.* § 10-4-708(1).

11. *Id.* § 10-4-706(1)(b), (c).

12. *Id.* § 10-4-706(1)(d)(I).

13. *Id.*

14. *Id.* § 10-4-706(1)(d)(II), (e).

*Offsets; Coordination of Benefits* — Workers' Compensation benefits actually provided within the time periods applicable to Colorado's no fault coverages are to be offset against no fault benefits.<sup>15</sup>

The Colorado statute requires coordination of other health care insurance or benefits with automobile accident reparations to avoid duplicative payments for the same loss.<sup>16</sup>

*Priorities of Coverage* — Primary coverage is afforded by the insurance applicable to the accident vehicle. If an insured person is operating a car of which he is not the owner, or employee of the owner, the operator's policy is primary and the owner's policy is excess coverage.

For vehicles owned by tax exempt organizations and designed to transport twelve or more persons, the owner's insurance is primary for the operators of the vehicle; as to the passengers, it is secondary to any motor vehicle insurance which covers them. Similarly, individuals in a ridesharing arrangement look to their own no fault insurance for primary coverage.

If two or more insurers are obligated to pay benefits, the limits of a single policy apply except as to optional additional coverages purchased by an insured.<sup>17</sup>

*Subrogation; Arbitration* — An insurer paying no fault benefits has a direct cause of action against a tortfeasor not insured under a policy by a state licensed insurer. Where an accident involves a private passenger vehicle and a non-private passenger vehicle, the insurer of the former has a direct cause of action for no fault benefits paid against the owner or operator of the non-private vehicle.<sup>18</sup>

If one insurer paying benefits is entitled to claim against another on the ground that the latter's insured was at fault in causing the accident, the issues of liability and amount of reim-

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15. *Id.* § 10-4-707(5).

16. *Id.* § 10-4-709. Examples of the type of benefits which must be coordinated with no fault coverages are group health and accident insurance, and benefits provided by health maintenance organizations (HMOs).

17. *Id.* § 10-4-707(3), (4), (6), 10-4-707.5. Ridesharing agreements refer to car pooling for transportation to work or other activities.

18. *Id.* § 10-4-713.

bursement must be decided by binding inter-company arbitration.<sup>19</sup>

*Tort Immunity and Actions* — Persons entitled to basic no fault benefits and insurers providing such benefits have no tort action against the owner or operator of a properly insured vehicle. Exceptions to this tort immunity arise if the accident has resulted in death, dismemberment, permanent disability or permanent disfigurement. Alternatively, a monetary threshold of reasonable value of medical and rehabilitation services in excess of \$500 is specified. The monetary threshold for actions involving vehicles in a ridesharing arrangement is \$5000.

Permitted tort actions include those for pain and suffering, loss of earnings and earning capacity beyond the fifty-two week limitation and not compensated by an applicable policy, or for benefits provided in excess of the minimum coverages required by Colorado's no fault law.

Tort actions are also permissible against tortfeasors who have not complied with the statute's insurance requirements; those who intentionally commit a tort; and manufacturers, distributors, suppliers or repairmen subject to a products liability action.<sup>20</sup>

## CONNECTICUT

*Required Insurance* — The Connecticut Motor Vehicles Law requires that after an accident the owner or operator of a motor vehicle deposit security or have in effect liability insurance or a bond with limits of \$20,000/\$40,000/\$10,000.<sup>21</sup> Motor vehicle liability policies must include uninsured motorist coverage.<sup>22</sup> However, the security requirements of the Motor Vehicles Law have been supplemented by the No-Fault Motor Vehicle Insurance Law of 1972<sup>23</sup> which now provides that a motor vehicle may not be registered unless the application is accompanied

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19. *Id.* § 10-4-717(1).

20. *Id.* §10-4-713, -714.

21. CONN. GEN. STAT. § 14-117 (West 1984). Effective January 1, 1984, the \$10,000 property damage limit replaces the previous \$5000 limit.

22. CONN. GEN. STAT. ANN. § 38-175(c) (1969 & Supp. 1983).

23. Act of May 19, 1972, ch. 690, 1972 Conn. Acts 2.438 (codified at CONN. GEN. STAT. ANN. § 38-319 to -351 (Supp. 1983)).

by an insurance identification card and a statement that the owner has provided security covering no fault reparations and residual liability.<sup>24</sup> The no fault system of Connecticut does not cover property damage.

*Covered Vehicles* — The statute applies to private passenger motor vehicles, a category which includes campers and truck-types (up to 1500 pounds load capacity). Motorcycles and vehicles used as public conveyances are excluded.<sup>25</sup>

*Covered Persons* — Referred to as “basic reparations insureds,” covered persons are owners of secured vehicles, relatives and minors in custody residing in the same household.<sup>26</sup> Basic reparations insureds are entitled to benefits, under the owner’s insurance, if injured while occupants of any private passenger motor vehicle or as pedestrians injured by physical contact with a motor vehicle. Persons outside the class of basic reparations insureds may recover if injured as occupants of, or through physical contact with the insured vehicle.

An employee injured while occupying the employer’s vehicle looks first to the security of that vehicle and, if none, to security covering him or her as a basic reparations insured.<sup>27</sup>

Excluded from benefits under the accident vehicle’s insurance are persons owning a vehicle required to carry no fault security, persons injured outside the United States or Canada, and non-basic reparations insureds, injured out of state while pedestrians.<sup>28</sup> A converter and his survivors can recover only from a policy under which the converter is a basic reparations insured. A person intentionally causing injury to himself or another is totally disqualified from benefits, and so are his survivors.<sup>29</sup>

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24. CONN. GEN. STAT. ANN. §§ 14-12b, 38-327 (1969 & Supp. 1983). The owner may comply with the security provisions by purchasing insurance or qualifying as a self-insurer.

25. *Id.* § 38-319(g).

26. *Id.* § 38-319(a). Relative is defined as a person related by blood, marriage, or adoption. *Id.* § 38-319(h).

27. *Id.* § 38-322.

28. *Id.* § 38-321.

29. *Id.* §§ 38-331, -332.

*Covered Uses* — Basic reparations benefits apply to injuries arising out of the ownership, maintenance or use of a private passenger vehicle as a motor vehicle. A person must be injured while occupying (in, upon, entering, leaving) the vehicle or by physical contact with it. A parked car is not a covered use unless: (a) it creates an unreasonable risk; (b) the person was injured while occupying it; or (c) injury resulted from physical contact with equipment mounted on the vehicle or property being loaded or unloaded.<sup>30</sup>

*Benefits, Generally* — The maximum of basic reparations is \$5000 per person. Insurers may offer optional additional coverages.<sup>31</sup>

Benefits are payable as expenses accrue and become overdue if not paid within fifteen working days after the insurer receives proof of loss. Interest at the rate of twelve percent per annum applies to overdue payments.<sup>32</sup>

A civil action against an insurer to recover no fault benefits is subject to a two year statute of limitations. A court may award a reasonable fee to the insured's attorney.<sup>33</sup>

Basic and supplemental no fault benefits are insulated from garnishment, execution and attachment to the same extent as wages and earnings.<sup>34</sup>

*Medical Benefits* — "Allowable expense" means reasonable charges for medical, surgical, dental, hospital, nursing, x-ray and ambulance services, prosthetic devices, laboratory fees, drugs and rehabilitation.<sup>35</sup>

*Work Loss* — No fault benefits apply to loss of income of an employed worker or to the equivalent unemployment compensation for an entitled unemployed person, reduced by income

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30. *Id.* § 38-320.

31. *Id.* § 38-320(d), -330.

32. *Id.* § 38-333.

33. *Id.* §§ 38-333, -334, 52-584, -555.

34. *Id.* § 38-336.

35. *Id.* § 38-319(b). Section 38-337 emphasizes the insurer's duty, within the \$5000 limit, to pay for occupational training and rehabilitation treatment whether or not it will enhance the injured person's earning power.

from substitute work. Payments may not exceed eighty-five percent of lost income or \$200 per week.<sup>36</sup>

*Survivor Benefits* — Payments to dependent survivors for economic loss parallel work loss benefits and are subject to the same \$200 per week maximum.<sup>37</sup>

*Substitute Services; Funeral Expenses* — Expenses for necessary services the injured or deceased person would have performed for his family are included in work loss and survivor loss coverage. Allowable expenses include funeral costs not to exceed \$2000.<sup>38</sup>

*Offsets; Subrogation; Reimbursement* — The only offsets are Workers' Compensation payments and Medicare benefits, provided the Medicare deduction does not prejudice protection for a future illness or injury.<sup>39</sup>

An insurer is entitled to reimbursement, out of a claimant's recovery of damages from a covered person for basic reparations it has paid such claimant. The statute prescribes a formula for the insurer's share of attorney's fees. The insurer possesses a lien against the claimant's recovery for the amount of the reimbursement. In other cases, the insurer has a right of subrogation to recover no fault benefits.<sup>40</sup>

*Tort Actions and Exemption* — An owner of a motor vehicle who has not complied with the security requirements of the no fault law is personally liable for basic reparations payments. The owner, registrant, operator or occupant of a secured vehicle is exempt from liability for negligence resulting in economic or noneconomic loss unless the claimant can satisfy the monetary or verbal threshold for a tort action. The monetary threshold is \$400 in "allowable expense" (medical, hospital, etc. charges). To

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36. *Id.* § 38-319(b), -320(e).

37. *Id.* § 38-319(b). Dependent survivors are defined as a spouse and others who had been receiving support which would qualify them as dependents under the Internal Revenue Code. Dependency ceases at 18, or in the case of the spouse, upon remarriage.

38. *Id.*

39. *Id.* § 38-333(c).

40. *Id.* § 38-325.

meet the alternative serious injury requirement, the accident victim must have suffered a permanent injury or disfigurement, fracture, loss of body function or member, or death.<sup>41</sup>

#### DISTRICT OF COLUMBIA

*Insurance Requirements* — Residents of the District of Columbia who own motor vehicles required to be registered must maintain insurance covering liability for accidents outside the District, uninsured motorist protection, property damage liability and personal injury protection.<sup>42</sup> Nonresidents owning or operating vehicles in the District must maintain property damage liability, uninsured motorist and personal injury protection insurance.<sup>43</sup> The District of Columbia's no fault law, Compulsory No-Fault Motor Vehicle Insurance Act of 1982, became effective September 18, 1982.<sup>44</sup>

*Covered Vehicles* — Motor vehicle, as defined by the statute, means any device propelled by an internal combustion engine, electricity or steam. It does not include a motorcycle, traction engine, road rollers and vehicles propelled upon rails or tracks.<sup>45</sup> The Act permits the mayor, after a hearing, to exclude taxicabs from provisions of the no fault law; this exemption has been declared.<sup>46</sup>

*Covered Persons* — Covered persons include the named insured, spouse, relative or person less than eighteen years old and in the custody of the named insured or relative, who reside in the same household as the named insured,<sup>47</sup> victims of accidents in the District, or in any state if the victim was a beneficiary under a personal injury protection (PIP) policy or occupied a

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41. *Id.* § 38-323.

42. D.C. CODE ANN. § 35-2103(a) (Supp. 1983). Personal injury and property damage liability limits are \$10,000/\$20,000/\$5000. *Id.* § 35-2106(a)(2), (b).

43. *Id.* § 35-2103(b)(1).

44. Law No. 4-155, 1982 D.C. Laws.

45. D.C. CODE ANN. § 35-2102(17) (Supp. 1983).

46. *Id.* § 35-2111(e). Mayor's Order 83-176, issued June 30, 1983 (effective Aug. 8, 1983).

47. D.C. CODE ANN. § 35-2102(10) (Supp. 1983).

vehicle owned by a person who was a beneficiary.<sup>48</sup>

Excluded from coverage are persons: (a) owning a motor vehicle without the required insurance; (b) using a vehicle unlawfully taken; (c) who are nonresidents using an unregistered vehicle and who are not beneficiaries of a policy providing PIP protection applicable to the District.<sup>49</sup>

*Covered Uses* — The no fault act refers to “maintenance or use” of a motor vehicle, defined as any activity related to operation or transportation including occupying, entering, alighting from and repairing. Excluded is conduct in the business of repairing or servicing a motor vehicle, unless performed off the business premises or in the course of loading or unloading.<sup>50</sup>

*Benefits, Generally* — No fault benefits relate to economic loss consisting of medical, rehabilitation and substitute services expenses, work loss and death benefits.<sup>51</sup> The statute sets limits for each category.

PIP benefits are payable within thirty days of the insurer’s receipt of reasonable proof of loss. Attorney’s fees and interest are chargeable against an insurer for overdue payments.<sup>52</sup> A civil action for first party benefits may be commenced within three years of the injury or of the date written notice is given to the insured by the claimant.<sup>53</sup>

*Medical and Rehabilitation Benefits* — The maximum prescribed by statute for medical and rehabilitation expenses is \$100,000 for any one accident victim.<sup>54</sup> Non-medical treatment in accordance with a recognized religious method of healing is included.<sup>55</sup>

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48. *Id.* § 35-2106(d).

49. *Id.* § 35-2106(e).

50. *Id.* § 35-2102(14).

51. *Id.* § 35-2102(13).

52. *Id.* § 35-2110(c)(1), (e).

53. *Id.* § 35-2111(a).

54. *Id.* § 35-2104(c)(5).

55. *Id.* § 35-2104(c)(3).

*Loss of Income Benefits* — An aggregate limit of \$24,000 is prescribed for work loss. The victim may receive up to \$2000 per month, but actual income loss will be reduced twenty percent to reflect income taxes otherwise payable by the recipient.<sup>56</sup>

*Replacement Service Benefits* — The Act allows \$50 per day in incurred expenses for ordinary and necessary services the victim would have performed for his family. These expenses are covered for three years from the date of the accident.<sup>57</sup>

*Survivor and Funeral Benefits* — The District of Columbia plan does not provide for no fault survivor benefits. It states that “benefits payable for work loss do not include any loss incurred after the victim’s death.”<sup>58</sup> It does provide for \$2000 in actual funeral costs for any one victim.<sup>59</sup>

*Collateral Sources; Offsets* — Benefits an individual receives or may receive from the following sources are subtracted from PIP benefits unless by law these collateral sources are to be secondary to or duplicative of PIP benefits:

- (a) Social Security (but not Title XIX);
- (b) Workers’ Compensation;
- (c) state mandated temporary non-occupational disability insurance;
- (d) any government program, except government life insurance.<sup>60</sup>

With the exception of the above benefits, no fault insurance is primary over any other applicable coverage.<sup>61</sup>

PIP insurers may offer deductibles at reduced premium rates, but such deductibles may not apply to emergency care immediately following an accident.<sup>62</sup>

*Priority of Insurance* — Priorities among insurers for payment of no fault benefits designate the liable insurer in the fol-

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56. *Id.* § 35-2104(d)(1)(A).

57. *Id.* § 35-2104(d)(1)(B).

58. *Id.* § 35-2104(d)(3).

59. *Id.* § 35-2104(e).

60. *Id.* § 35-2110(b).

61. *Id.* § 35-2110(f).

62. *Id.* § 35-2110(a).

lowing circumstances:

- (a) if the victim is an employee injured in the employer's vehicle in the course of employment, the employer's insurer is liable;
- (b) if the victim is a passenger in a commercial vehicle, the insurer of the owner or operator is liable; however, if the vehicle is a school bus or bus operated under a government transportation program, the vehicle insurer is not liable if the victim is entitled to benefits from another source;
- (c) if the victim is insured, the carrier providing required insurance is liable;
- (d) if the victim is not insured, the carrier providing required insurance applicable to the motor vehicle the victim occupied in the accident, or any motor vehicle involved in the accident, is liable;
- (e) if none of the above, payment shall be made under the assigned claims plan.<sup>63</sup>

For purpose of priority of payments, a parked and unoccupied vehicle does not qualify as a motor vehicle involved in an accident unless it is parked in a manner creating an unreasonable risk of injury.<sup>64</sup>

If two or more insurers are equally obligated to pay PIP benefits, the insurer that is the object of the first claim must pay and seek pro rata contributions from other insurers.<sup>65</sup>

*Subrogation; Arbitration* — An insurer obligated to pay PIP benefits has a right of reimbursement from any other insurer, if fault is determined and if the accident involved two or more motor vehicles, one of which was not a passenger vehicle.<sup>66</sup> If the involved insurers do not agree on the right to or amount of reimbursement, the issues must be determined by inter-company arbitration.<sup>67</sup>

*Tort Actions and Exemption* — No tort action may be maintained based on an injury for which PIP benefits are payable under the District of Columbia's insurance law.<sup>68</sup> Conversely,

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63. *Id.* § 35-2107(a). The assigned claims plan is established in *id.* § 35-2108.

64. *Id.* § 35-2107(b).

65. *Id.* § 35-2107(c).

66. *Id.* § 35-2111(d)(1).

67. *Id.* § 35-2111(d)(3).

68. *Id.* § 35-2105(a).

a no fault insured is immune from tort liability to the extent that the victim's basic economic loss is covered by the Act's first party benefits.

Exemptions to this general restriction of tort litigation provide that a person may be liable:

- (a) for "excess economic loss" (medical and rehabilitation expenses and work loss exceeding the statutory PIP benefits);
- (b) for economic and noneconomic loss to survivors of a victim;
- (c) for economic and noneconomic loss arising out of use of a motor vehicle with intent to injure himself or others;
- (d) for any losses, in accordance with otherwise applicable laws, if an owner of an uninsured motor vehicle is involved in the accident.<sup>69</sup>

These provisions in effect deny *any* tort immunity for economic loss or general damages if the tortfeasor's conduct is intentional, or causes the death of a person, or if the tortfeasor is uninsured.

Liability for noneconomic loss also remains if one of two thresholds is satisfied:

- (a) a victim's injury consists of substantial permanent scarring or disfigurement, permanent impairment significantly disabling performance of professional or customary activities or impairment preventing performance of customary activities for more than 180 consecutive days;
- (b) a victim's medical expenses exceed \$5000 inclusive of diagnostic x-ray costs. The \$5000 threshold is to be adjusted annually to reflect the cost of living.<sup>70</sup>

### *Distinctive Features*

*Consumer Protection* — The District of Columbia Act requires the superintendent of insurance to assure that purchasers of insurance "are adequately informed with respect to availability and comparative cost" and that policies are written in language understandable to the public.<sup>71</sup> Unless it is determined that the policy holder was at fault, an insurer may not increase his rates on account of an accident.<sup>72</sup>

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69. *Id.* § 35-2105(b)(1)-(3), (5).

70. *Id.* § 35-2105(b)(4), (6).

71. *Id.* § 35-2106(4).

72. *Id.* § 35-2106(5).

Buttressing these provisions, an entire section of the Act is devoted to consumer protection.<sup>73</sup> It details permissible grounds for cancellation of a policy, required notice and right to review of cancellation or refusal to renew, prohibition of discrimination and of inquiries concerning prior cancellations or nonrenewals. These features of the District of Columbia plan exhibit a concern for the due process rights of the insurance consumer. They may reflect the conclusion of the Michigan Supreme Court that where an insurance requirement attaches to the right to own and operate a motor vehicle, the law must ensure fairness in the availability and choice of insurance.

*"Floating" Threshold* — In its restrictions upon traditional tort claims, the District of Columbia Act not only erects the highest monetary barrier (\$5000) of any state to suits for general damages, but also directs that this threshold be adjusted annually to reflect the cost of living.<sup>74</sup> Pennsylvania and Michigan provide for indexing maximum work loss benefits. The District of Columbia law, by contrast, does not reveal this solicitude for the standard of living of accident victims. Rather, its mandate, that the \$5000 be modulated upward or downward synchronously with the movement of prices, reveals a legislative intent to maintain the same, comparative level of difficulty in access to a tort remedy. Because of this indexing and the relatively substantial figure of \$5000 in medical expense, the District of Columbia's plan contrasts with the psychology of states with low fixed monetary thresholds. The latter conveys the distinct impression that the legislators supported only half-heartedly any erosion of traditional tort rights and liabilities and compromised upon a token monetary threshold.

## FLORIDA

*Required Insurance* — Florida's financial responsibility law requires proof of liability coverage of \$10,000/\$20,000/\$5000 but not as a prerequisite to registration of a vehicle.<sup>75</sup> Motor vehicle liability insurance policies must include uninsured motorist

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73. *Id.* § 35-2109.

74. *Id.* § 35-2105(a), (b)(6).

75. FLA. STAT. ANN. §324.021(7), .051(2) (West Supp. 1982).

coverage.<sup>76</sup> The Florida Motor Vehicle No-Fault Law<sup>77</sup> has imposed an additional obligation on every owner or registrant of a motor vehicle to maintain security for the payment of no fault benefits.<sup>78</sup> The property damage provisions originally included in the no fault law were repealed in 1976 following the Florida Supreme Court's determination that such provisions were unconstitutional.<sup>79</sup>

*Covered Vehicles* — According to the statute, motor vehicle means any self-propelled vehicle with four or more wheels, required to be licensed for use on the highways. This class includes commercial vehicles, trailers, and private passenger cars (sedan, station wagon, jeep) not used as public conveyances. Van and motor home types of vehicles are covered if not used primarily for professional or business purposes.

Specifically excluded are mopeds, mobile homes and mass transit and school transportation vehicles.<sup>80</sup>

*Covered Uses* — Use is not specifically defined. The statute refers to injuries sustained while occupying a motor vehicle or as a result of physical contact with a motor vehicle and, generally, arising out of the ownership, maintenance or use of a motor vehicle.<sup>81</sup>

Excluded uses may be deduced by reference to the definition of vehicles excluded from coverage, i.e., van-type vehicles used primarily for professional or business purposes.

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76. *Id.* § 627.727.

77. The Florida no fault law, originally enacted in 1971 has been amended many times, was repealed in 1981, and reenacted in 1982. References are to the statutory text effective October 1, 1982. Florida Automobile Reparation Reform Act, Pub. L. No. 71-252, 1971 Fla. Laws 1355-71 (codified at FLA. STAT. ANN. § 627.730 -.741 (West 1972)), repealed by Regulatory Sunset Act, Pub. L. No. 81-318, 1981 Fla. Laws 1493, reenacted (in substantially the pre-repeal form) by Act of June 21, 1982, Pub. L. No. 82-243, 1982 Fla. Laws 1553-70 (codified at FLA. STAT. ANN. § 627.730 (West Supp. 1983)).

78. FLA. STAT. ANN. § 627.733 (West Supp. 1983).

79. See *Kluger v. White*, 281 So. 2d 1 (Fla. 1973). The repeal of the property damage portion of the no fault law was by Act of June 27, 1976, Pub. L. No. 76-266, 1976 Fla. Laws 726.

80. FLA. STAT. ANN. § 627.732(1) (West Supp. 1974-1982).

81. *Id.* § 627.736(4)(d).

*Covered Persons* — Persons entitled to no fault benefits are the named insured, relatives in the same household, operators and passengers in the insured vehicle and non-occupants struck by the insured vehicle.

An insurer may exclude from benefits the named insured and relatives occupying an uninsured vehicle owned by the named insured, a person operating the vehicle without permission, and a person intentionally causing his injury or injured while committing a felony.<sup>82</sup>

Owners and relatives are covered for in-state accidents while occupying a motor vehicle or as non-occupants injured by physical contact with a motor vehicle. Coverage for out-of-state accidents is confined to occupants of the insured's vehicle. State residents are covered if not occupants of a vehicle but injured by physical contact with the insured vehicle unless the resident is the owner of a vehicle to which the security requirements of the no fault law apply.<sup>83</sup>

*Benefits, Generally* — The aggregate limit of first party payments is \$10,000.<sup>84</sup> The insured may elect a deductible of from \$250 to \$2000 applicable only to himself and relatives, but such deductible may not reduce the amount payable for funeral expenses. The named insured may also elect deductibles for off-setting payments from Medicare or benefits payable to military personnel and their dependent relatives. The named insured may elect insurance coverage which excludes benefits for loss of gross income and earning capacity.<sup>85</sup>

Benefits are overdue if not paid within thirty days of written notice of loss to the insurer. Overdue payments bear simple interest of ten percent per annum.<sup>86</sup>

*Medical Benefits* — No fault reimbursement covers eighty percent of reasonable charges for medical, dental, x-ray, rehabilitative, ambulance, hospital and nursing services, prosthetic de-

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82. *Id.* § 627.736(1)-(2).

83. *Id.* § 627.736(4)(d).

84. *Id.* § 627.736(1).

85. *Id.* § 627.739.

86. *Id.* § 627.736(4).

vices and religious healing.<sup>87</sup>

*Work Loss Benefits* — Under “disability benefits,” the Florida plan provides for sixty percent of loss of gross income and loss of earning capacity. Disability benefits also include payment for substitute services; no per diem or other independent limit is assigned to these services. Disability payments must be made at least every two weeks.<sup>88</sup>

*Funeral Expenses* — A separate limit is prescribed for funeral, burial or cremation expenses; it is \$1750 for each individual and is not subject to a deductible.<sup>89</sup>

*Offsets; Collateral Sources* — The following must be subtracted from no fault benefits: Workers’ Compensation and Medicaid payments. In addition, the named insured may elect to have Medicare benefits deducted.<sup>90</sup>

In any tort action, the court must admit into evidence any collateral source payments to the claimant and instruct the jury to deduct such amounts from its verdict.<sup>91</sup> The Florida statute offers a detailed description of collateral sources: any public program providing medical expenses or disability payments; health, sickness, income disability insurance; medical, hospital or other health services arranged for by contract with a group, association or corporation; wage continuation plans.

*Tort Immunity; Threshold for Tort Claims* — The owner or operator of a properly secured vehicle is exempted from tort liability to the extent that no fault reparations are payable to the injured party. An owner who fails to have security in effect at the time of an accident has no immunity and is personally liable for the payment of no fault benefits.<sup>92</sup>

There is no monetary threshold for a tort action seeking general damages. A suit to recover for pain, mental anguish and

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87. *Id.* § 627.736(1)(a).

88. *Id.* § 627.736(1)(b).

89. *Id.* § 627.736(1)(c).

90. *Id.* § 627.736(4).

91. *Id.* § 627.7372.

92. *Id.* §6627.737(1), .733(4).

inconvenience is permissible if the accident has caused permanent loss of an important body function, significant scarring, other permanent injury or death.<sup>93</sup>

An accident victim entitled to bring a tort action may not recover damages duplicating PIP benefits paid or payable. An insurer has no lien on any tort recovery to recoup PIP benefits it has paid.<sup>94</sup>

*Miscellaneous* — Florida's statute does not permit stacking of coverages.

It contains comprehensive discovery procedures including a requirement of sworn medical statements attesting to the necessity of treatment.

Its most distinctive feature is section 627.737(2) embracing a broad range of collateral sources which must be disclosed to and deducted by a jury in reaching its award.

## GEORGIA

*Insurance Requirements* — To obtain a motor vehicle license, an owner must have in effect at least the minimum statutory liability<sup>95</sup> and PIP coverage.<sup>96</sup> Georgia's no fault law, the Georgia Motor Vehicle Accident Reparations Act, became effective on October 1, 1974.<sup>97</sup> The combined effect of its statutes is to make Georgia a compulsory automobile insurance state.<sup>98</sup>

*Covered Vehicles* — Vehicles with more than three load-bearing wheels and required by state law to be registered are covered by no fault. Such vehicles are designed primarily for highway use and not propelled by muscular power.<sup>99</sup>

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93. *Id.* § 627.737(2).

94. *Id.* § 627.736(3).

95. Georgia Motor Vehicle Accident Reparations Act, GA. CODE § 33-34-4(a) (1982). The liability limits are \$15,000/\$30,000/\$10,000. Motor Vehicle Safety Responsibility Act, GA. CODE § 40-9-37(a) (1983). Liability policies must also include uninsured motorist coverage of \$15,000/\$30,000/\$10,000. GA. CODE § 33-7-11(a) (1983).

96. GA. CODE § 33-34-4 (1982).

97. Georgia Motor Vehicle Accident Reparations Act, No. 783, 1974 Ga. Laws 113 (codified at GA. CODE § 33-34-1 to -14) (Supp. 1983).

98. GA. CODE § 33-34-10 (1982 & Supp. 1983).

99. *Id.* § 33-34-2(6) (1982).

Motorcycles are specifically excluded.<sup>100</sup>

*Covered Uses* — Use under the Georgia statute comprehends operation, maintenance or use of a motor vehicle as a motor vehicle. Not included in this description is repairing or servicing a motor vehicle, unless (a) it is not performed on the business premises or (b) it involves actual operation of a vehicle on business premises. Also excluded are loading and unloading operations unless performed while the vehicle is being occupied.<sup>101</sup>

*Covered Persons* — Persons entitled to receive first party benefits are the named insured, spouse, children and relatives of either spouse if residing in the insured's household, pedestrians struck by the insured vehicle, and any other person occupying the insured vehicle. The statute limits this coverage geographically to the United States and Canada.<sup>102</sup>

Not covered are persons who are injured while occupying a stolen vehicle or an owned, uninsured vehicle, or as a result of war, rebellion or nuclear explosion.<sup>103</sup>

*Benefits, Generally* — The Georgia plan prescribes an aggregate maximum of \$5000 for each covered, injured person.<sup>104</sup> An insurer must make available optional first party coverage with a limit of \$50,000 per person applicable to all medical expenses, eighty-five percent of loss of income and up to \$2000 in funeral expenses.<sup>105</sup> Additional coverage must also be offered for motor vehicle damage up to the actual cash value of the vehicle at the time of loss, and \$10 a day (with an overall maximum of \$300) for loss of use of the motor vehicle, subject to deductibles requested by the insured.<sup>106</sup>

Benefits are payable monthly as loss accrues. Proven claims are overdue if not paid within thirty days. An entitled claimant

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100. *Id.* § 33-34-14 (Supp. 1983).

101. *Id.* § 33-34-2(9) (1982).

102. *Id.* § 33-34-2(5), -7(a)(1) to (3).

103. *Id.* § 33-34-7(b).

104. *Id.* § 33-34-4(a)(2).

105. *Id.* § 33-34-5(a)(1)(A), (B), (D).

106. *Id.* § 33-34-5(a)(3) (Supp. 1983).

may sue an insurer for overdue benefits. If the insurer cannot establish a good faith defense, he is liable for a penalty up to twenty-five percent of the amount due and reasonable attorney's fees. For failure to pay without a good faith defense within sixty days, the insurer is subject to punitive damages.<sup>107</sup>

*Medical Benefits* — A cap of \$1500 applies to required first party payments for necessary medical expenses. These expenses cover medical, surgical, dental, x-ray, ambulance, hospital, nursing and rehabilitation services and prosthetic devices. All services must be rendered or authorized by a physician, or according to a recognized religious method of treatment.<sup>108</sup>

*Loss of Income Benefits* — Eighty-five percent of loss of income or earnings during disability is payable up to a maximum benefit of \$200 a week.<sup>109</sup> Disability must commence within twenty-four months of the accident and consists of inability to perform substantially all duties of one's usual occupation or to engage in one's principal activity if not employed on a full-time basis.<sup>110</sup>

*Substitute Services* — Reasonably incurred expenses up to \$20 a day are covered for services the injured person would have performed for his or her household. These benefits are not payable if performed by members of the injured person's household.<sup>111</sup>

*Survivor Benefits; Funeral Expenses* — If the insured person dies and is survived by a spouse or dependent children, loss of income and substitute services benefits are payable to the survivors on a monthly basis.<sup>112</sup> Benefits cover funeral and burial expenses with a maximum of \$1500 per person.<sup>113</sup>

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107. *Id.* § 33-34-6(b), (c).

108. *Id.* § 33-34-4(a)(2)(A).

109. *Id.* § 33-34-4(a)(2)(B).

110. *Id.* § 33-34-2(2).

111. *Id.* § 33-34-4(a)(2)(C).

112. *Id.* § 33-34-4(b).

113. *Id.* § 33-34-4(a)(2)(D).

*Offsets* — Medical and loss of income no fault benefits are reduced by the amount the injured party is entitled to payment for these losses under workers' compensation law.<sup>114</sup> Medical payment benefits and uninsured motorist benefits provided in motor vehicle liability insurance policies are excess coverage over the required no fault benefits.<sup>115</sup>

*Tort Actions and Exemption* — A properly insured person is exempt from liability for damages for noneconomic loss unless the injury caused is serious.<sup>116</sup> Serious injury means death, fractured bone, permanent disfigurement, dismemberment, permanent loss of a bodily function, permanent loss of sight or hearing, injury resulting in disability for at least ten consecutive days or medical expenses exceeding \$500.<sup>117</sup>

A person eligible for economic loss benefits cannot recover from a tortfeasor damages compensable under no fault benefits for economic loss.<sup>118</sup>

*Subrogation* — Georgia's system does not permit insurers to be subrogated to the rights of no fault payment recipients except in accidents involving a motor vehicle weighing more than 6500 pounds unloaded. Recovery under this exception shall be determined between insurers according to traditional tort law principles.<sup>119</sup>

## HAWAII

*Required Insurance* — Hawaii's Motor Vehicle Safety Responsibility Act has required a deposit of security or proof of liability coverage following an accident.<sup>120</sup> The security insurance policy or bond must meet the liability protection prescribed in the no fault law,<sup>121</sup> and in addition, a liability policy

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114. *Id.* § 33-34-8(a).

115. *Id.* § 33-34-8(d).

116. *Id.* § 33-34-9(a).

117. *Id.* § 33-34-2(13).

118. *Id.* § 33-34-9(b).

119. *Id.* § 33-34-3(d)(1).

120. HAWAII REV. STAT. § 287-5, -10(a), -21 (1976).

121. Motor Vehicle Accident Reparations Act, Act No. 203, 1973 Hawaii Sess. Laws 381; *id.* Act No. 168, 1974 Hawaii Sess. Laws 317 (codified at HAWAII REV. STAT. § 294-1

must include uninsured motorist coverage.<sup>122</sup> The 1974 no fault law, however, states that no person may register or operate a motor vehicle in Hawaii without insurance (or equivalent security) satisfying the coverages required in the new reparations act. This more recent legislation places Hawaii among the *compulsory* insurance states.

*Covered Vehicles* — Motor vehicle includes any vehicle required to be registered under Hawaii's Highway Safety Act, and also vehicles with less than four wheels and trailers attached to vehicles.<sup>123</sup>

*Covered Persons* — The class of covered persons is composed of the named insured, spouse, relatives residing in the same household as the named insured, occupants, operators and users of an insured vehicle, pedestrians, bicyclists, and mopedists injured by the insured vehicle.<sup>124</sup>

Persons excluded from no fault benefits are occupants of another motor vehicle and those operating or using a vehicle while engaged in criminal conduct.<sup>125</sup>

There is no exoneration from tort liability for special damages for individuals who intentionally cause harm, or are involved in criminal activity which causes damages to person or property.<sup>126</sup>

*Covered Uses* — Injuries compensable under Hawaii's plan must be caused by a "motor vehicle accident," i.e., an accident arising out of the operation, maintenance or use of a motor vehicle. Operation, maintenance or use covers occupying, entering into and alighting from a motor vehicle, or arising out of an object drawn or propelled by a motor vehicle. Excluded uses are

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to -41) (effective Sept. 1, 1974). Section 294-10(a) requires liability coverage of not less than \$25,000 for accidental harm to any one person and \$10,000 for property damage.

122. HAWAII REV. STAT. § 431-448 (1976).

123. *Id.* § 294-2(8). The Highway Safety Act provides that motor vehicles, defined as self-propelled vehicles including electrically powered vehicles not operated on rails, and excluding bicycles, must be registered if they are to be operated on the public highways. *Id.* § 286-2, -41.

124. *Id.* § 294-3(d), -4(1)(A).

125. *Id.* § 294-5(c).

126. *Id.* § 294-6(c).

loading and unloading a motor vehicle unless the injury occurs in the immediate proximity of the vehicle, and repair and service of the vehicle unless off the premises of such business.<sup>127</sup>

*Benefits, Generally* — The maximum of no fault payments to an accident victim or his or her survivor is \$15,000.<sup>128</sup> Sublimits are specified for income loss, substitute services and funeral expenses.

Insurers issuing no fault policies must make available optional coverages for damage to the insured's vehicle, for losses not covered by the no fault benefits and for deductibles and exclusions approved by the insurance commissioner.<sup>129</sup>

No fault benefits are to be paid as they accrue and within thirty days after the insurer receives reasonable proof. However, if the victim dies, the beneficiary may opt for a lump sum payment. Overdue benefits bear interest at one and one-half percent per month.<sup>130</sup>

The statute of limitations for basic and optional no fault coverage claims is two years from the accident or the last benefits payment or entry of the arbitration order, whichever occurred last. The time limited for tort suits is two years from the date of the accident or of the last no fault or optional benefits payment, whichever is later.<sup>131</sup>

*Medical Benefits* — The Hawaii plan covers reasonable and necessary expenses for hospital, medical, dental, nursing, optometric, ambulance and prosthetic services, x-ray and spiritual healing, and psychiatric, occupational and rehabilitative therapy.<sup>132</sup>

*Income Benefits* — Earnings loss qualifying for reimbursement is the lesser of \$800 per month or monthly earnings for the period during which the accident victim is unable to engage in

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127. *Id.* § 294-2(9), (12).

128. *Id.* § 294-2(10).

129. *Id.* § 294-11.

130. *Id.* § 294-4(2), (3), (4).

131. *Id.* § 294-36.

132. *Id.* § 294-2(10)(A), (B).

available, appropriate, gainful activity.<sup>133</sup>

*Other Benefits* — Expenses for services substituting for those the injured or deceased victim would have performed for his household may be reimbursed up to \$800 per month.<sup>134</sup>

Funeral expenses not to exceed \$1500 are provided.<sup>135</sup>

No separate allowance is specified for survivor benefits. The statute states, however, that an insurer shall pay to the legal representative of the decedent, for benefit of his surviving spouse and any dependent (as defined in the 1954 Internal Revenue Code, section 152), an amount equal to benefits payable to the spouse and dependent(s) subject to the \$15,000 aggregate limit.<sup>136</sup>

*Offsets; Subrogation* — Benefits an injured person is entitled to receive from Workers' Compensation or under Social Security laws are primary. Offset of these benefits, however, is inapplicable to a surviving spouse and dependents.<sup>137</sup>

If Workers' Compensation is contested and not collected, the injured person is entitled to no fault benefits and the insurer to a right of subrogation for collection of compensation benefits.<sup>138</sup>

If the accident victim gains a tort recovery by suit or settlement duplicating no fault benefits paid, the no fault insurer is subrogated to fifty percent of the no fault benefits.<sup>139</sup>

*Tort Liability* — The following persons enjoy partial immunity from tort liability: the owner, operator or user of an insured vehicle, and the operator or user of a vehicle which, unknown to the operator or user, is uninsured. The immunity attaches for accidental harm occurring within the state.<sup>140</sup> A suit in tort is available to the victim (or estate) if:

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133. *Id.* § 294-2(10)(C).

134. *Id.* § 294-2(10)(D).

135. *Id.*

136. *Id.* § 294-4(1)(B).

137. *Id.* § 294-5(b).

138. *Id.*

139. *Id.* § 294-7.

140. *Id.* § 294-6(a).

- (a) the accident results in death or serious injury;
- (b) the paid or accrued expenses exceed the "medical rehabilitative limit"; or
- (c) the first party benefits are exhausted.<sup>141</sup>

Under (a), serious injury is defined as significant permanent loss of use of a part or function of the body, or permanent and serious disfigurement resulting in mental distress. Under (b), the "medical rehabilitative limit" is a monetary threshold to be computed annually by the commissioner and established for each policy term year commencing on September 1. The limit through August 31, 1984 is \$4500.<sup>142</sup> The tort action provisions thus incorporate the principle of a flexible monetary threshold requiring annual determination.

*Dispute Settlement* — The Hawaii statute offers a variety of recourses for dispute settlement. A claimant objecting to denial of benefits may call for an administrative hearing before the commissioner, whose decision in turn may be appealed.<sup>143</sup> Disputes relating to a no fault policy may be submitted to arbitration; an appeal may be taken from the judgment of the arbitrator to the circuit court.<sup>144</sup>

*Distinctive Features* — One of the most unusual provisions of this reparations law (noted in the preceding section on tort liability) is the "floating" monetary threshold for tort actions. Charging the commissioner with setting a figure annually which would exclude ninety percent of medical benefits payments, the legislature has adopted a procedure which attempts to align the monetary breakthrough for a general damages action with the actual medical benefits experience of a preceding year.<sup>145</sup>

Another unique feature is reflected in the language selected by the legislature to express the obligations the law imposes on all parties involved in the reparations scheme. The Hawaii stat-

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141. *Id.* § 294-6(a)(1) to (3).

142. *Id.* § 294-10(b), (c). The insurance commissioner is directed to tabulate benefits paid or reserved for each accident and determine the dollar value below which 90% of all medical claims are expected to fall.

143. *Id.* § 294-31.5 (Supp. 1981).

144. *Id.* § 294-32 (1976).

145. *Id.* § 294-10(b) (Supp. 1981).

ute commences with a section devoted to "Purpose," unusual in its content, for in fact it is a stern lecture justifying the subsequent insurance requirements. Addressing the public, it states that "driving is a privilege, not a right, and . . . carries with it a serious social responsibility."<sup>146</sup> The moral tone is heard again in the admonition to lawyers, insurers (and possibly also claimants):

No part of no-fault benefits shall be applied in any manner as attorney's fees. . . . The insurer shall pay . . . attorney's fees and costs of settlement or suit, necessary to effect the payment of . . . no-fault benefits found under the contract. Any . . . violation of this provision shall be illegal . . . and unethical . . . .<sup>147</sup>

Finally, the statute details a "Joint Underwriting Plan" to accommodate assigned risks covering specific classes of vehicles (commercial, motorcycles) and drivers (those receiving public assistance, handicapped drivers, drivers convicted of enumerated offenses) with the objective of making liability and no fault insurance universally available.<sup>148</sup>

## KANSAS

*Insurance Requirements* — Kansas is a compulsory insurance state, conditioning registration of a vehicle upon the owner's certification that he has the required security in effect.<sup>149</sup> Owners of motor vehicles must carry liability insurance<sup>150</sup> and insurers must include in such policy personal injury protection benefits,<sup>151</sup> and uninsured motorist coverage.<sup>152</sup> The Kansas Automobile Injury Reparations Act became effective February 22, 1974.<sup>153</sup>

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146. *Id.* § 294-1.

147. *Id.* § 294-4(5).

148. *Id.* § 294-20, -22 (1974 & Supp. 1981).

149. KAN. STAT. ANN. § 40-3118(a) (1981 & Supp. 1982).

150. *Id.* § 40-3107(e). The liability limits are \$25,000/\$50,000/\$10,000.

151. *Id.* § 40-3107(f).

152. *Id.* § 40-284.

153. Kansas Automobile Injury Reparations Act, ch. 193, 1974 Kans. Laws 640 (codified at KAN. STAT. ANN. § 40-3101 to -3121 (1981)).

*Covered Vehicles* — Self-propelled vehicles required to be registered are included in the no fault plan. Motorized bicycles are specifically excluded.<sup>154</sup> The statute also lists a great variety of apparatus under "Special mobile equipment" representing mainly construction machinery only incidentally operated on highways;<sup>155</sup> this equipment does not come within the no fault scheme. Similarly, implements of husbandry and federal, state and local government vehicles are outside the class of covered vehicles.<sup>156</sup>

*Covered Persons* — PIP benefits are payable to the named insured, relatives in the same household, operators and passengers of the insured vehicle, and pedestrians struck by the insured vehicle.<sup>157</sup> An owner of a motorcycle or motor driven cycle may reject PIP coverage for persons occupying his cycle.<sup>158</sup>

An insurer may exclude from benefits:

- (a) a named insured and relatives injured while occupying another vehicle owned by the named insured but not insured;
- (b) any person operating the insured vehicle without permission;
- (c) any person who intentionally causes injury to himself;
- (d) a converter;
- (e) any person injured in the business of repairing or servicing motor vehicles (unless conduct is off the business premises); and
- (f) a nonoccupant injured while loading or unloading.<sup>159</sup>

*Covered Uses* — The statute speaks in terms of ownership, operation, maintenance or use of a motor vehicle.<sup>160</sup>

*Benefits, Generally* — The Kansas no fault Act contains no aggregate monetary limit for all first party benefits; rather, it assigns a dollar ceiling to each type of payment. PIP benefits

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154. KAN. STAT. ANN. § 40-3103(m) (1981).

155. *Id.* § 40-3103(v).

156. *Id.* § 40-3105(a), (b).

157. *Id.* § 40-3107(f).

158. *Id.*

159. *Id.* § 40-3108.

160. *Id.* § 40-3102.

include disability, funeral, medical, rehabilitation, substitute services and survivor benefits.<sup>161</sup>

PIP benefits are overdue if not paid within thirty days after the insurer is furnished written notice of a covered loss, but disability benefits must be paid every two weeks. Overdue payments bear interest at the rate of eighteen percent per annum.<sup>162</sup>

*Medical Benefits* — The statute assigns a limit of \$2000 for necessary health care covering surgery, x-ray, dental, ambulance, hospital and nursing services, religious healing and prosthetic devices.<sup>163</sup>

*Loss of Income Benefits* — Disability benefits, the term used by the Kansas no fault law, means inability to pursue "available and appropriate gainful activity" as a result of an automobile accident injury. The maximum allowable for disability benefits is \$650 per month for one year (\$7800).<sup>164</sup>

*Rehabilitation Benefits* — Rehabilitation expenses up to \$2000 are covered for psychiatric services and occupational therapy.<sup>165</sup> Medical and rehabilitation charges may not exceed customary charges in cases not involving insurance.<sup>166</sup>

*Survivor Benefits; Funeral Expenses* — "Survivor" refers to decedent's spouse, or child under the age of eighteen.<sup>167</sup> Survivors are entitled to loss of income benefits of \$650 per month for one year (\$7800), less expenses not incurred by reason of the death of the accident victim.<sup>168</sup> The statute allows \$1000 for funeral expenses.<sup>169</sup>

*Substitute Services* — Expenses incurred for necessary services the injured party would have performed for his household

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161. *Id.* § 40-3103(q).

162. *Id.* § 40-3110(b).

163. *Id.* § 40-3103(k).

164. *Id.* § 40-3103(b).

165. *Id.* § 40-3103(r).

166. *Id.* § 40-3111(a).

167. *Id.* § 40-3103(x).

168. *Id.* § 40-3103(y).

169. *Id.* § 40-3103(d).

are provided as "substitution benefits" subject to a maximum of \$12 per day for 365 days (\$2380).<sup>170</sup>

*Offsets* — Benefits payable under federal or state workers' compensation laws are to be credited against PIP benefits; otherwise no fault payments are primary.<sup>171</sup>

*Tort Actions and Exemption* — An accident victim may recover damages for pain and suffering (noneconomic loss) only if:

- (a) medical expenses have a reasonable value of \$500 or more; *or*
- (b) the injury consists of permanent disfigurement, or a fracture to a weight bearing bone, or a compound, comminuted, displaced or compressed fracture, or loss of a body member, or permanent injury within reasonable medical probability, or permanent loss of a bodily function or death.<sup>172</sup>

Kansas thus possesses a low monetary threshold, as well as the verbal, serious injury threshold commonly prescribed in no fault statutes. The limitations on the right to sue for noneconomic detriment confer an equivalent immunity upon owners and operators of motor vehicles, assuming they have complied with the insurance requirements of the reparations law.

*Priorities and Contribution Among Insurers* — The vehicle owner's insurer must pay PIP benefits for in-state injuries to the *owner* as an occupant of a vehicle not excluded by other statutory provisions<sup>173</sup> or as a non-occupant injured by physical contact with a motor vehicle, and for out-of-state injuries if the owner is occupying his own vehicle.<sup>174</sup> The owner's insurance covers a relative under the same conditions, provided the rela-

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170. *Id.* § 40-3103(w).

171. *Id.* § 40-3110(a).

172. *Id.* § 40-3117.

173. *See id.* § 40-3108(a) (excluding benefits for non-permitted operators, as well as occupants of an uninsured vehicle owned by the named insured).

174. *Id.* § 40-3109(a)(1), (2).

tive owns no vehicle required to be insured.<sup>175</sup> The owner's insurance applies to in-state injuries to any other person occupying the insured vehicle and also to residents who are not occupants but are injured by physical contact with the insured vehicle.

If two or more insurers are responsible for PIP benefits for the same injury to one person, the statutory maximum applies. Any insurer paying the benefits is entitled to recover from each insurer involved an equitable pro rata share of benefits and expenses.<sup>176</sup>

*Subrogation* — If the injured person is entitled to bring a tort action and recovers from the tortfeasor by judgment or settlement, the insurer is subrogated to the extent the recovery duplicates PIP benefits paid by the insurer. The statute accords the insurer a lien and permits it to intervene in a tort action to enforce its lien. If the injured party obtains a tort recovery prior to payment of all PIP benefits, the amount by which the recovery exceeds no fault benefits actually paid is credited against future payments of PIP benefits.<sup>177</sup>

If the injured party or his representative has the right to bring a tort action and fails to do so within eighteen months of the accident, the failure operates as an assignment of the cause of action to the insurer to the extent the tort recovery duplicates PIP benefits.<sup>178</sup>

## KENTUCKY

*Required Insurance* — The Financial Responsibility Act requires proof of financial responsibility when a judgment is not paid,<sup>179</sup> and the state's Insurance Law directs that all automobile liability policies must include uninsured motorist coverage.<sup>180</sup> These older provisions, however, are now supplemented

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175. *Id.* § 40-3109(a)(3).

176. *Id.* § 40-3109(b).

177. *Id.* § 40-3113a(a), (b).

178. *Id.* § 40-3113a(c).

179. Ky. REV. STAT. § 187.290(11) (1981 & Supp. 1982) (specifying the limits as \$10,000/\$20,000/\$5000).

180. *Id.* § 304.682.

by the Kentucky Motor Vehicle Reparations Act<sup>181</sup> which includes a requirement of security in the amounts of \$10,000/\$20,000/\$5000 for liability coverage, in addition to the mandatory basic reparations (no fault) benefits for personal injury introduced by this more recent statute.<sup>182</sup>

*Covered Vehicles* — The class of covered vehicles includes vehicles used to transport persons or property on public highways and not propelled by muscular power. A long list of excluded vehicles is named by the statute covering construction and farm equipment, vehicles propelled by electrical power and mopeds.<sup>183</sup> Motorcycles, also, are not required to carry no fault coverage.<sup>184</sup>

*Covered Persons* — “Basic reparations insured,” the statutory term identifying persons who benefit from compliance with no fault insurance requirements, means the named insured, a spouse or relative and a minor in custody, residing in the household of the named insured.<sup>185</sup> It also includes, for accidents within the state, every person suffering injury arising out of a motor vehicle accident.<sup>186</sup> For out-of-state accidents (but within the United States or Canada), covered persons include basic reparations insureds, drivers and other occupants of a secured vehicle and pedestrians struck by a secured vehicle.<sup>187</sup> Converters, and persons intentionally causing injury, are specifically excluded.<sup>188</sup>

The above description of covered persons is, however, subject to an essential qualification. The statute provides that “[a]ny person may refuse to consent to the limitations of his tort rights and liabilities” contained in the no fault statute.<sup>189</sup> Accordingly, as more fully developed in the subsequent section, on

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181. Act of April 2, 1974, ch. 385, 1974 Ky. Acts 752 (effective July 1, 1975) (codified at KY. REV. STAT. § 304.39-010 to -340 (1981 & Supp. 1982)).

182. KY. REV. STAT. § 304.39-110(1) (1981).

183. *Id.* § 304.39-020(7).

184. *Id.* § 304.39-110(3).

185. *Id.* § 304.39-020(3).

186. *Id.* § 304.39-030(1).

187. *Id.* § 304.39-030(2).

188. *Id.* § 304.39-190, -200.

189. *Id.* § 304.39-060(4).

option to reject tort limitations, any person who has filed a written rejection is not eligible for basic reparations benefits or for protection from lawsuits to recover noneconomic as well as economic losses.

*Covered Uses* — Injury must arise out of the operation, maintenance or use of a motor vehicle. "Use" covers occupying, entering into and alighting from a motor vehicle but does not include conduct in the business of repairing or servicing motor vehicles unless occurring off the business premises, or the loading or unloading of a vehicle unless while occupying it.<sup>190</sup>

*Benefits, Generally* — The required aggregate of first party benefits is \$10,000 for any one person.<sup>191</sup>

Basic reparations are payable monthly as expenses are incurred. Benefits are overdue if not paid within thirty days of proof of loss; overdue payments bear interest of twelve percent or eighteen percent per annum, the higher figure applying to delay "without reasonable foundation."<sup>192</sup> In actions brought by or against the insured, the court may award the insured reasonable attorney's fees.<sup>193</sup>

Optional, additional reparations coverage must be offered up to \$40,000 per person. The added coverage may duplicate collateral sources, provide deductibles, or coinsurance.<sup>194</sup>

No fault benefits are exempt from garnishment, attachment and execution and, with some exceptions, are not assignable.<sup>195</sup>

Statute of limitation provisions of the Kentucky Act address a number of specific situations. If basic reparations have not been paid to the injured claimant, he may commence an action within two years of the loss or four years after the accident,

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190. *Id.* § 304.39-020(6).

191. *Id.* § 304.39-020(2). The insurer must offer deductibles of \$250, \$500, \$1000. *Id.* § 304.39-140(4).

192. *Id.* § 304.39-210(2).

193. *Id.* § 304.39-220.

194. *Id.* § 304.39-140(1), (2).

195. *Id.* § 304.39-260(1). This section, however, permits attachment, etc. upon a claim of a creditor providing products, services or accommodations. *Id.* Section 304.39-240 permits assignment of work loss benefits to pay alimony and child support, and assignment of medical benefits to pay for products, services or accommodations furnished by the assignee. *Id.* § 304.39-240.

whichever is earlier. An action for survivor benefits must be commenced within one year of the death or four years of the accident, whichever is earlier. Disability of a claimant does not toll the limitations period.

Tort actions, not abolished by the no fault law, must be commenced within two years of the injury, or the death, or the last reparation payment, whichever is later.<sup>196</sup>

*Medical Benefits* — The insurance covers reasonable expenses for needed medical care, rehabilitation, products, services, accommodations, and all healing arts professions licensed by the state. The Act includes a presumption that a submitted medical bill is reasonable.<sup>197</sup>

*Income Loss Benefits* — Work loss means loss of income from work, expenses incurred for services the injured person would have performed for income, reduced by any income from substitute work.<sup>198</sup> The maximum is \$200 per week subject to a fifteen percent reduction if the benefits are not taxable as income.<sup>199</sup> This \$200 weekly maximum is an *aggregate* figure covering not only work loss, but also replacement services and survivor benefits.

*Survivor Benefits* — “Survivor’s economic loss” payments cover economic loss as a result of the accident victim’s death. It does not include services the decedent would have performed for the benefit of his household.<sup>200</sup>

*Replacement Services* — Reasonable expenses to replace services the accident victim would have performed without remuneration for his family are recoverable during his lifetime as “replacement services loss,” and if his injury is fatal, as “survi-

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196. *Id.* § 304.39-230(1), (2). If some benefits have been paid, an action for further benefits must be commenced within two years of the last payment.

197. *Id.* § 304.39-020(5)(a).

198. *Id.* § 304.39-020(5)(b).

199. *Id.* § 304.39-120(2).

200. *Id.* § 304.39-020(5)(d). Reference is made to § 411.130 treating distribution of damages for wrongful death to survivors: spouse, children, parents.

vor's replacement service loss."<sup>201</sup>

*Funeral Expenses* — One thousand dollars is specified for expenses in any way related to funeral or burial charges for any one person.<sup>202</sup>

*Offsets* — Payments from Social Security or Workers' Compensation which a person is entitled to receive because of his injury are subtracted from reparations benefits to arrive at net loss.<sup>203</sup>

*Subrogation* — An insurer (reparation obligor) obligated to pay first party benefits is subrogated, to the extent of those benefits, to rights of the injured person against a nonsecured (uninsured) person. The insurer also has the right to recover from the insurer of a secured person no fault payments it has made to an injured party, except that an injured person recovering damages from the *liability* insurer of a second person has priority in collecting his damages.<sup>204</sup> In effect, a reparation obligor paying first party benefits to the party not at fault has the right to recover such benefits from the liability insurer of the tortfeasor.

*Tort Actions and Exemption* — The owner, registrant, operator or occupant of a secured vehicle is exempt from liability for pain, suffering, mental anguish and inconvenience (noneconomic detriment) unless the accident victim can satisfy either:

- (a) the monetary threshold (medical expenses exceeding \$1000); or
- (b) the serious injury threshold (death, permanent disfigurement, fracture, loss of body member or function, or "permanent injury within reasonable probability").

Tort liability for economic loss resulting from accidents in Kentucky is abrogated to the extent that no fault benefits are

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201. *Id.* § 304.39-020(5)(c), (e).

202. *Id.* § 304.39-020(5)(a).

203. *Id.* § 304.39-120(1).

204. *Id.* § 304.39-070, -140(3).

payable to cover such loss.<sup>205</sup>

*Option to Reject Tort Limitations* — The above limitations upon tort actions and liability apply to all registrants and users of motor vehicles in Kentucky, *unless* a person has rejected curtailment of the right to sue a negligent motorist. The statute requires insurers to submit rejection forms and accompanying information to insurance applicants. A rejection must be in writing and filed with the department of insurance. Anyone, even an uninsured owner or operator, is deemed to have consented to application of the Motor Vehicle Reparations Act unless he has filed a rejection.

What are the consequences of rejecting the statute's limitations on tort rights and liabilities?

(1) A rejecter may not collect basic reparations (no fault) benefits.

(2) An operator of a motor vehicle may be sued for all damages — economic loss and pain and suffering — if he has a rejection on file. If the injured person is a no fault insured and collects basic reparations from his insurer, the latter has the right to recover such payments from the owner and operator of the vehicle.

An owner or operator of a motorcycle may file a rejection applicable only to injuries arising from the use of the motorcycle and not other vehicles which he may own or use.<sup>206</sup>

In sum, a person sustaining injury as the result of a motor vehicle accident is not subject to the tort limitations provided in the statute if he has filed a formal rejection *or* if his injury is at the hands of an operator who has filed a formal rejection.

*Arbitration* — The Kentucky statute creates a Kentucky Insurance Arbitration Association composed of all basic reparations insurers to encourage voluntary reimbursements and to provide a mechanism for reimbursement among insurers for basic and added benefits paid. The principles of tort law govern such reimbursements.<sup>207</sup>

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205. *Id.* § 304.39-060(2)(a), (b).

206. *Id.* § 304.39-060(4) to (9).

207. *Id.* § 304.39-290.

*Distinctive Features* — Kentucky's no fault law is unique in providing the option to refuse consent to limitation of tort rights and liabilities. This qualification was considered necessary in view of the state constitution's due process guarantee. The partial abrogation of tort actions is thus insulated from constitutional objection by permitting an individual to reject the principles of a no fault system.

## MASSACHUSETTS

*Required Insurance* — Massachusetts is a compulsory insurance state — the first to enact legislation making motor vehicle liability protection a condition precedent to registration<sup>208</sup> and the first to implement a personal injury protection benefits plan, which became effective January 1, 1971.<sup>209</sup> Every motor vehicle liability bond or policy must provide for PIP payments of at least \$2000.<sup>210</sup>

*Covered Vehicles and Uses* — The no fault law refers to section one of the Massachusetts motor vehicle statute for a definition of motor vehicle. In general, the term covers vehicles designed for propulsion other than by muscular power and includes trailers.<sup>211</sup>

Covered uses include being in or upon a motor vehicle, entering, alighting from or, in the case of a pedestrian, being struck by a motor vehicle.<sup>212</sup> The statute also refers to injury arising out of the ownership, operation, maintenance or use of a

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208. Act of May 24, 1926, ch. 368, 1926 Mass. Acts 423. The motor vehicle liability policy must contain limits at least of \$10,000/\$20,000 for personal injury. MASS. GEN. LAWS ANN. ch. 90, § 34A (West 1969 & Supp. 1983-1984).

The no fault is codified at *id.* ch. 90, § 34A, 34D, 34M, 34N; *id.* ch. 175, §§ 22E-22H, 113B, 113C; *id.* ch. 231, § 6D. Applicants for registration may in lieu of a liability policy or bond deposit with the state treasurer \$5000 as security for payment of personal injury damages. *Id.* ch. 90, § 34D.

Motor vehicle liability policies must include \$5000 coverage for damage or destruction of property of others in one accident. *Id.* ch. 90, § 340. Insurers must make optional collision coverage available. *Id.*

209. Act of Aug. 13, 1970, ch. 671, 1970 Mass. Acts 529.

210. MASS. GEN. LAWS ANN. ch. 90, § 34A (West 1969 & Supp. 1983-1984).

211. *Id.*

212. *Id.*

motor vehicle on public thoroughfares within the state.<sup>213</sup>

*Covered Persons* — The Massachusetts plan entitles the following persons to PIP benefits: the named insured, household members, authorized operators and passengers and pedestrians struck by the insured vehicle. In addition, the named insured and members of his household are entitled to PIP payment for loss resulting from an injury sustained while upon, entering or exiting, or as a pedestrian, struck by a vehicle not carrying no fault coverage.

Insurers may exclude persons contributing to their injury while under the influence of alcohol or drugs, while committing a felony or acting with specific intent to harm themselves or others.<sup>214</sup>

*Benefits, Generally* — The required \$2000 PIP coverage encompasses all categories of basic economic loss sustained within two years of the date of the accident.<sup>215</sup> The policyholder may elect for himself alone, or also for members of his household, deductibles of \$100 to \$2000, thereby eliminating his (their) claim to a portion or to all first party benefits.<sup>216</sup> The assigned claims plan pays PIP benefits to persons who do not have such coverage available.<sup>217</sup> But persons entitled to Workers' Compensation presumably must look to that source rather than the motor vehicle no fault law.<sup>218</sup>

PIP benefits are due as loss accrues and upon reasonable proof furnished the insurer. Benefits are overdue if not paid within thirty days. The claimant may sue in contract and if he prevails, the court shall assess costs and attorney's fees against the insurer.<sup>219</sup>

*Medical Benefits* — Within the aggregate limit of \$2000, entitled persons may receive payments for all necessary medical,

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213. *Id.* § 34N (West Supp. 1983-1984).

214. *Id.* § 34A (West 1969 & Supp. 1983-1984).

215. *Id.*

216. *Id.* § 34M (West Supp. 1983-1984).

217. *Id.* § 34N.

218. *Id.* § 34A (West 1969 & Supp. 1983-1984).

219. *Id.* § 34M (West Supp. 1983-1984).

surgical, x-ray, dental, ambulance, hospital, nursing, prosthetic and funeral expenses.<sup>220</sup>

*Wage Loss Benefits* — Persons employed or self-employed at the time of the accident are entitled to amounts actually lost, and unemployed persons to loss of earning power subject to a seventy-five percent limitation. Persons entitled to payments under a wage continuation plan are limited to a combined total (PIP plus wage plan) of seventy-five percent of average weekly wage or salary for the year preceding the accident. An insured compensated under a wage continuation plan and also from another source, may reimburse the plan and thus suffer no loss in standing under the plan.<sup>221</sup>

*Substitute Services* — PIP coverage includes payment to non-household members for “ordinary and necessary” services which the accident victim would have performed gratuitously for his family.<sup>222</sup>

*Tort Exemption and Liability* — Owners, operators and occupants of a no fault insured vehicle are exempt from tort liability to the extent that the injured party is entitled to PIP benefits. This exemption applies only to accidents in Massachusetts. If there is a tort action, the PIP benefits to which the victim is entitled do not become payable until the judgment or settlement of the tort claim and the recovery is reduced by the expenses and loss reimbursable as PIP benefits.<sup>223</sup>

A plaintiff may pursue an action for pain and suffering damages only if either the monetary or the serious injury threshold is crossed. Medical expenses (including hospital, nursing, funeral expenses) must exceed \$500, or the injury must result in death, loss of body member, serious disfigurement, or loss of sight or hearing.<sup>224</sup>

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220. *Id.* § 34A (West 1969 & Supp. 1983-1984).

221. *Id.*

222. *Id.*

223. *Id.* § 34M (West Supp. 1983-1984).

224. *Id.* ch. 231, § 6D.

*Subrogation* — An insurer is subrogated to the rights of any party for the amount paid in first party benefits and may sue in tort any person not exempted from liability under the statute. The insurer may also claim for its expenses in pursuing its subrogation right against any other insurer liable for tort damages. The question of whether one insurer is entitled to such expenses from another insurer is to be determined by agreement between them, or failing agreement, by arbitration.<sup>225</sup>

## MICHIGAN

*Required Insurance* — Michigan is a compulsory insurance jurisdiction. With the enactment of its Motor Vehicle Personal and Property Protection Act, effective October 1, 1973,<sup>226</sup> the state established liability and first party insurance coverage (or its equivalent) as a condition precedent to registration of a vehicle.<sup>227</sup> The no fault scheme includes property protection coverage.<sup>228</sup>

*Covered Vehicles* — The no fault law defines motor vehicle as a vehicle of more than two wheels operated or designed for use upon a public highway and not propelled by muscular power. Motorcycles and mopeds are excluded.<sup>229</sup>

*Covered Uses* — Use means ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. A parked vehicle is not "use" unless:

- (a) the vehicle is parked in a manner creating unreasonable risk of bodily injury; or
- (b) injury results from physical contact with equipment mounted on the vehicle or property being loaded onto or unloaded from the vehicle; or

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225. *Id.* ch. 90, § 34M.

226. Ch. 31, 1972 Mich. Pub. Acts 294 (codified at MICH. COMP. LAWS ANN. § 500.3101 to .3179 (1983). Existing liability limits of \$20,000/\$40,000/\$10,000 remain in the law. *Id.* § 500.3009(1).

227. *Id.* § 500.3101(1). The owner or registrant of a motorcycle is required to maintain liability insurance. First party medical benefits insurance is optional. *Id.* § 500.3103(1), (2).

228. *Id.* § 500.3121.

229. *Id.* § 500.3101(2)(c).

(c) injury is sustained by a person occupying, entering or leaving the parked vehicle.<sup>230</sup>

*Covered Persons* — PIP coverage applies to the named insured, the person's spouse and relatives of either domiciled in the same household.<sup>231</sup> These persons would also be covered by their insurance if injured as pedestrians.

Excluded are persons who unlawfully use a motor vehicle, or whose uninsured vehicles are involved in accidents, or who are nonresidents occupying a motor vehicle not registered in Michigan and not insured by state certified insurers,<sup>232</sup> or persons intentionally causing injury.<sup>233</sup>

*Benefits, Generally* — The required limits for first party coverage are separately specified for each category of loss as detailed in the following sections. Because no cap is prescribed for medical expenses, the statute sets no overall maximum amount for first party benefits.

PIP benefits are payable as loss accrues and are overdue if not paid within thirty days of proof of loss. Overdue benefits bear simple interest of twelve percent per annum. An agreement for assignment of future benefits is void.<sup>234</sup>

The statute of limitations for actions to recover personal injury benefits is one year from the date of the accident. If written notice has been given to the insurer within one year of the accident or if the insurer has paid some benefits, a claimant may sue within one year of incurring the most recent allowable expense.<sup>235</sup> Actions for property protection benefits are also subject to a one year statute of limitation.<sup>236</sup> Attorney's fees may be charged against either party for cause.

*Medical Benefits* — The Michigan statute employs a broad term "allowable expenses" to cover reasonable charges for products, services and accommodations for the care and rehabilita-

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230. *Id.* § 500.3101(2)(d), .3105(1), .3106.

231. *Id.* § 500.3114.

232. *Id.* § 500.3113.

233. *Id.* § 500.3105(4).

234. *Id.* § 500.3142, .3143.

235. *Id.* § 500.3145.

236. *Id.*

tion of an injured person. No monetary ceiling or time limitation is attached to these health care benefits.<sup>237</sup>

*Work Loss Benefits* — Loss of income is payable for three years from the date of the accident and is subject to a fifteen percent tax savings reduction. The statute originally limited payment to \$1000, including any income earned by the injured worker.<sup>238</sup> The same provision, however, directed the commissioner of insurance to adjust the limit annually to reflect increases in the cost of living. The resultant rate for October 1, 1983 through September 30, 1984 is \$2252.<sup>239</sup>

*Survivor Benefits* — The work loss benefits which cease on the date of the injured worker's death become the aggregate of survivor benefits. The same monthly limit adjusted to the consumer price index is payable to dependents. The indexing of survivor benefits became effective on October 16, 1978 and applies to accidents subsequent to that date. Survivor benefits are paid for a period of three years from the date of the accident.<sup>240</sup>

Dependents are defined as a wife or husband living with her or his spouse at the time of death and a child under the age of eighteen or incapacitated from self-support.<sup>241</sup>

*Substitute Services* — Expenses up to a limit of \$20 per day are payable to replace services the injured or deceased accident victim would have performed for the benefit of his or her dependents.<sup>242</sup>

*Funeral Expenses* — Under "allowable expenses," the Michigan statute makes provision for funeral expenses not to exceed \$1000.

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237. *Id.* § 500.3107.

238. *Id.*

239. Mich. Dep't of Licensing and Regulation, Ins. Bureau Bulletin 83-05, Aug. 8, 1983.

240. MICH. COMP. LAWS ANN. § 500.3108 (1983).

241. *Id.* § 500.3110.

242. *Id.* § 500.3108.

*Offsets; Deductibles* — Benefits provided under state or federal law are to be subtracted from PIP benefits. Deductibles may be offered by an insurer, but they are applicable only to the named insured and spouse or relative in the same household.<sup>243</sup>

Personal injury protection insurance may be coordinated with other health or accident coverage of the insured. Such adjustments are applicable only to the named insured and spouse or relative in the same household.<sup>244</sup>

*Order of Priority of Coverage* — When PIP benefits are payable under the injured person's policy and also under the policy of his or her spouse or relative, the injured person's insurer must pay all benefits and is not entitled to recoupment from the other insurer.

A person injured while an operator or passenger of a vehicle in the business of transporting passengers receives no fault benefits from the insurer of the vehicle. However, this coverage does not apply, unless the injured person has no other no fault protection, if the person is a passenger on a school bus, a common carrier, a bus operated by a nonprofit organization, or an insured taxicab.

An employee, his or her spouse or relative injured while occupying the employer's vehicle will look to the insurer of the vehicle furnished by the employer.

Generally, injured occupants of a motor vehicle will claim first against the insurer of the vehicle's owner and secondarily against the operator's insurer. Injured occupants of a motorcycle involved in an accident with a motor vehicle are to claim in the following order against the insurer of the: (a) owner of the motor vehicle; (b) operator of the motor vehicle; (c) operator of the motorcycle; (d) owner of the motorcycle.<sup>245</sup>

*Reimbursement and Indemnification of Insurers* — A reimbursement for or subtraction of PIP benefits paid is permissible if the victim has recovered on a tort claim for an accident outside the state or an in-state tort claim against an uninsured

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243. *Id.* § 500.3109.

244. *Id.* § 500.3109a.

245. *Id.* § 500.3114.

vehicle owner or operator or an in-state tort claim based on intentionally caused injury. The recoupment or subtraction may not exceed the amount of PIP benefits and may not invade recovery for noneconomic loss or for allowable expenses, work and survivor losses in excess of first party benefits.<sup>246</sup>

*Property Protection Coverage* — A limit of \$1,000,000 is prescribed for damages to tangible property arising out of a motor vehicle accident. Payments are to consist of reasonable repair costs, replacement less depreciation or value of loss of use. Properties excluded from no fault coverage fall in the following categories: vehicles, their contents and trailers, unless unreasonably parked; property owned by the named insured, spouse or relative, if any of these persons owned or operated the accident vehicle; and property damage in out-of-state accidents.<sup>247</sup>

*Tort Liability and Exemption* — Tort liability arising from the ownership, maintenance or use of a properly insured vehicle is abolished except for:

- (a) noneconomic loss if the injury results in death, serious impairment of a body function or permanent, serious disfigurement;
- (b) intentionally caused harm;
- (c) allowable expenses, work loss or survivor loss in excess of the specified daily, monthly or three year limitations;
- (d) damages up to \$400 to motor vehicles not covered by insurance. Damages are to be assessed on the basis of comparative fault.<sup>248</sup>

*Miscellaneous* — The Michigan statute provides for detailed discovery procedures,<sup>249</sup> an assigned claim facility,<sup>250</sup> residual tort liability,<sup>251</sup> and out-of-state accidents to covered persons.<sup>252</sup>

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246. *Id.* § 500.3116.

247. *Id.* § 500.3121, .3123.

248. *Id.* § 500.3135.

249. *Id.* § 500.3151-.3159.

250. *Id.* § 500.3171-.3176.

251. *Id.* § 500.3131. *See supra* note 226.

252. MICH. COMP. LAWS ANN. § 500.3111 (1983).

*Distinctive Features* — The Michigan scheme is by far the most generous of all state automobile accident reparations plans. With respect to benefits, it fastens no dollar cap or time period on medical, hospital and rehabilitation expenses. The open-endedness of this reimbursement mandates some form of reinsurance to cover costly long-term treatment. The legislature recognized the problem by providing for a catastrophic claims association composed of no fault insurers, which would indemnify any member for losses in excess of \$250,000.<sup>253</sup>

Another unusual element of the Michigan scheme is the indexed work loss and survivor benefits. The legislature originally set \$1000 per month as a limit but at the same time directed that the maximum be adjusted annually. The maximum applicable from October 1, 1983 through September 30, 1984 is \$2252. This figure also represents the aggregate of survivor loss benefits for the same period.

Michigan's no fault coverage includes property protection, but only for tangible property damaged within the state and not owned by the named insured, spouse or relative.

Michigan ranks in the forefront of litigation resolving many constitutional challenges to specific provisions of its no fault system. The supreme court of the state mandated fundamental revisions of the statute to comply with due process standards.<sup>254</sup> In addition to this comprehensive constitutional scrutiny, the state's appellate courts have clarified detailed application of the law, for example, questions relating to covered uses, specific vehicles, setoffs, etc. Consequently, an attorney facing issues lacking statutory or decisional clarification in his own state is well advised to consult the Michigan cases.

## MINNESOTA

*Insurance Requirements* — Owners of vehicles required to be registered must maintain a reparation security plan during the period of vehicle use covering no fault personal injury pro-

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253. *Id.* § 500.3104.

254. *Shavers v. Kelley*, 402 Mich. 554, 267 N.W.2d 72 (1978), represents the major case in no fault jurisprudence. The opinions in the trial court, court of appeals and supreme court offer an exhaustive analysis of a wide range of possible constitutional challenges.

tection, residual liability for personal injury and property damages<sup>255</sup> and uninsured motorist protection.<sup>256</sup> Minnesota is a compulsory insurance state; an owner must file evidence that he has the required security in effect before his vehicle may be registered.<sup>257</sup> The Minnesota No-Fault Automobile Insurance Act, adding a PIP coverage requirement, became effective January 1, 1975.<sup>258</sup>

*Covered Vehicles* — The class of vehicles subject to the no fault plan consists of vehicles with at least four wheels, required to be registered and designed to be self-propelled and used upon public highways. Attached trailers are specifically included in and motorcycles excluded from the statutory definition.<sup>259</sup>

*Covered Persons* — Covered persons include the named insured, spouse, other relatives, and minors in custody of the named insured or relative, so long as these individuals reside in the household of the named insured and are not named in another automobile policy complying with the no fault statute.<sup>260</sup>

Minnesota incorporates a territorial distinction in defining rights to benefits. Assuming that the injury arises out of the maintenance or use of a covered vehicle, if:

(a) the accident occurs in Minnesota, all injured persons have a right to basic benefits;

(b) the accident is in another state of the United States, its possessions or Canada, those entitled to basic benefits are the insured, the driver, and other occupants of a secured vehicle which is not a Minnesota governmental vehicle or one used in the business of transporting persons or

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255. MINN. STAT. ANN. § 65B.48 subd. 1, 65B.49 subd. 3 (West Supp. 1983). The minimum residual liability requirements are as follows: \$25,000 for personal injuries to any one person for any one accident; \$50,000 for personal injuries to two or more persons for any one accident; \$10,000 for destruction or injury to property for any one accident. *Id.* § 65B.49 subd. 3.

256. *Id.* § 65B.49 subd. 4.

257. *Id.* § 65B.48 subd. 1.

258. 1974 Minn. Laws 408 (codified as amended at MINN. STAT. ANN. § 65B.41-.71 (West 1983)).

259. MINN. STAT. ANN. § 65B.43 subd. 2 (West 1983).

260. *Id.* § 65B.43 subd. 5.

property.<sup>261</sup>

The act disqualifies from benefits occupants of motorcycles, converters, participants in official racing contests and persons intentionally injuring themselves or others.<sup>262</sup>

*Covered Uses* — Maintenance or use of a motor vehicle as a motor vehicle is encompassed by the no fault plan; maintenance or use includes occupying, entering or exiting from the vehicle.<sup>263</sup>

Excluded uses refer to conduct in the business of repairing or servicing vehicles, and loading or unloading, unless while the vehicle is being occupied.<sup>264</sup>

*Benefits, Generally* — Basic economic loss benefits provide reimbursement up to a maximum of \$30,000, subdivided into a maximum of \$20,000 for medical expenses and \$10,000 for all other losses.<sup>265</sup>

Benefits are payable monthly as income losses or expenses are incurred. Benefits not paid within thirty days of proof of loss are overdue and bear interest at the rate of fifteen percent.<sup>266</sup>

All economic loss benefits are exempt from garnishment, execution and attachment except as to persons providing treatment or services.<sup>267</sup>

*Medical Benefits* — Reimbursable medical expenses include necessary medical, surgical, hospital, optical, chiropractic, dental, x-ray, ambulance, prosthetic and rehabilitative services and spiritual healing.<sup>268</sup> Rehabilitation treatment and occupational training are subject to specific regulations.<sup>269</sup> The limit for all medical expenses is \$20,000.<sup>270</sup>

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261. *Id.* § 65B.46.

262. *Id.* § 65B.46 subd. 3, 65B.58-.60.

263. *Id.* § 65B.43 subd. 3.

264. *Id.*

265. *Id.* § 65B.44 subd. 1.

266. *Id.* § 65B.54.

267. *Id.* § 65B.57.

268. *Id.* § 65B.44 subd. 2.

269. *Id.* § 65B.45.

270. *Id.* § 65B.44 subd. 1(a).

*Income Loss Benefits* — Income loss and disability benefits pay for eighty-five percent of present and future gross income loss up to \$200 per week and as part of the \$10,000 maximum covering income and survivor loss, replacement services and funeral expenses.<sup>271</sup> Compensation for income loss is to be reduced by income from substitute work actually performed or unreasonably refused by the accident victim.<sup>272</sup>

*Survivor Benefits* — Loss of contributions to survivors accruing after the injured person's death is compensable up to a maximum of \$200 per week. Surviving dependents are defined as spouse, child under the age of eighteen and incapacitated child who is living with the decedent at the time of death.<sup>273</sup>

*Substitute Services* — Expenses for services in lieu of those which the injured or deceased accident victim would have performed not for income but for the benefit of his household are reimbursable up to \$15 per day.<sup>274</sup>

*Funeral Expenses* — Funeral and burial expenses not in excess of \$1250 are covered.<sup>275</sup>

*Offsets* — Basic economic loss benefits are primary except for benefits paid or payable under Workers' Compensation law or Medicare.<sup>276</sup>

If the accident victim pursues a negligence action for injury arising out of the operation, use or maintenance of a vehicle with the required security, basic and optional benefits paid or payable will be subtracted from the tort recovery.<sup>277</sup>

*Subrogation; Arbitration* — If a reparation obligor pays benefits which another reparation obligor should pay, the paying obligor is subrogated to the rights of the person receiving the

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271. *Id.* § 65B.44 subd. 1(b), 3.

272. *Id.* § 65B.44 subd. 3.

273. *Id.* § 65B.44 subd. 6.

274. *Id.* § 65B.44 subd. 5, 7.

275. *Id.* § 65B.44 subd. 4.

276. *Id.* § 65B.61.

277. *Id.* § 65B.51 subd. 1.

benefits.<sup>278</sup>

A reparation obligor is subrogated to a claim based on intentional tort, strict liability or negligence (other than negligence in the use, maintenance or operation of a motor vehicle) to avoid duplication of payment for the same loss.<sup>279</sup>

The statute provides for arbitration between obligors. An obligor which pays first party benefits is entitled to indemnity from a reparation obligor providing residual liability coverage on a commercial vehicle of more than 5500 pounds, if negligence was the cause of the injury for which basic economic benefits were paid. This right of indemnity must be pursued through arbitration.<sup>280</sup>

The statute provides that the courts of Minnesota *may* prescribe rules of arbitration for accident victims' claims of \$5000 or less upon consent of the parties.<sup>281</sup>

*Tort Actions and Exemption* — Economic losses not payable by first party benefits, because of dollar or time limitations imposed on basic payments or because of exclusions, may be pursued in a negligence action.<sup>282</sup>

Damages for noneconomic detriment are barred by the no fault statute unless:

- (a) medical expenses exceed \$4000 or
- (b) the injury results in permanent disfigurement, permanent injury, death, or disability for sixty days or more.<sup>283</sup>

There is no limitation on the liability of persons manufacturing, repairing or distributing motor vehicles.<sup>284</sup>

*Priorities of Security* — Priorities among security for payment of basic economic loss benefits are prescribed. If the vehicle (other than a commuter van or vehicle transporting children to school) is used in the business of transporting persons or property, the security covering the vehicle is primary. The same

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278. *Id.* § 65B.47 subd. 6.

279. *Id.* § 65B.53 subd. 3.

280. *Id.* § 65B.53 subd. 1, 4.

281. *Id.* § 65B.525 subd. 1.

282. *Id.* § 65B.51 subd. 2.

283. *Id.* § 65B.51 subd. 3.

284. *Id.* § 65B.51 subd. 4.

rule applies if an employee or his spouse or relative is injured while using a vehicle furnished by an employer.<sup>285</sup>

For any other person who is not the driver or occupant of another involved motor vehicle, the applicable security is that covering the vehicle; if none, the injured person's security applies.<sup>286</sup> If two or more insurers are obligated to pay the same basic economic benefits, the insured may recover only once for the same loss.<sup>287</sup>

## NEW JERSEY

*Insurance Requirements* — New Jersey revised its automobile insurance law in 1983, enacting the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984,<sup>288</sup> effective January 1, 1984.<sup>289</sup> By its terms, every motor vehicle liability policy must include bodily injury coverage in the amounts of \$15,000 for injury or death of one person, \$30,000 for all persons in any one accident and \$5000 for property damage.<sup>290</sup> Every automobile liability policy must also provide PIP coverage for no fault benefits.<sup>291</sup>

*Covered Vehicles* — The statute refers to automobiles of a private passenger or station wagon type not used as a public conveyance. It includes vans, panel trucks and campers not utilized for occupational or business purposes other than farming.<sup>292</sup>

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285. *Id.* § 65B.47 subd. 1, 2.

286. *Id.* § 65B.47 subd. 3, 4.

287. *Id.* § 65B.47 subd. 5.

288. New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984, ch. 362, 1983 N.J. Laws 2029.

289. Portions of the Act pertaining to deductibles (codified as N.J. STAT. ANN. § 39:6A-4.3 (West Supp. 1984)) become effective sixty days after enactment and portions prescribing tort options (codified at *id.* § 39:6A-8) become effective July 1, 1984.

290. *Id.* § 39:6A-3 (West 1983). The new law is consistent with pre-existing statutory mandates that every owner or registrant maintain \$15,000/\$30,000/\$5000 liability insurance (*id.* § 39:6B-1) and uninsured motorist coverage (*id.* § 39:6A-14; *see also* § 27:28-1.1).

291. New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984, ch. 362, 1983 N.J. Laws at 2044.

292. *Id.* at 2041.

*Covered Uses* — In the familiar language of automobile insurance law, the New Jersey statute refers to injuries arising out of the ownership, operation, maintenance or use of an automobile and includes occupying, entering, alighting from or being struck by an automobile.<sup>293</sup>

*Covered persons* — Persons entitled to first party benefits are the named insured, members of the family residing in the insured's household, persons occupying or using the insured vehicle with permission and pedestrians injured by the insured vehicle.<sup>294</sup> Insurers may exclude from coverage persons intentionally causing injury, committing a felony, incurring injury while owning or operating an uninsured vehicle or occupying an automobile without permission of the named insured.<sup>295</sup>

*Benefits, Generally* — Although the New Jersey plan places limits on wage continuation and other payments, it does not impose a cap on medical benefits. The statute, however, establishes a reinsurance mechanism to protect the individual insurer's assets from being ravaged by catastrophic losses; medical expenses in excess of \$75,000 are reimbursable to the carrier from the Unsatisfied Claim and Judgment Fund Board.<sup>296</sup>

Benefits are payable as loss accrues<sup>297</sup> and are overdue if not paid within thirty days after written proof of loss, unless the insurer gives notice that additional time is needed to investigate the claim. A claimant has the option of electing binding arbitration to resolve a dispute involving overdue payments.<sup>298</sup> If the claimant decides to bring an action, it must be commenced within two years of incurring an expense or four years after the accident, whichever is earlier. Actions by decedents' estates must be commenced within two years after death or four years after the accident, whichever is earlier.<sup>299</sup>

No fault benefits are not assignable (except to a provider of

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293. *Id.* at 2044.

294. *Id.*

295. *Id.* at 2048.

296. *Id.* at 2044.

297. *Id.* at 2048.

298. *Id.* at 2046.

299. N.J. STAT. ANN. § 39:6A-13.1 (West 1983).

service benefits) and are not subject to attachment or execution.<sup>300</sup>

*Medical Benefits* — The New Jersey no fault Act defines medical expenses and hospital expenses separately,<sup>301</sup> and excludes hospital expenses in calculating the monetary threshold for a tort action.<sup>302</sup>

Medical expenses are defined to include the reasonable and necessary cost of medical, surgical, nursing and dental care, rehabilitation, medication, x-ray, diagnostic, ambulance and prosthetic services and other necessary expenses of treatment by persons licensed to practice medicine.<sup>303</sup> Hospital expenses cover the cost of a semi-private room, hospital meals and services, operating room, drugs, treatment by x-ray, laboratory tests, physiotherapy and other specific procedures.<sup>304</sup>

*Loss of Income* — The New Jersey statute provides for first party payments for loss of income of an "income producer." The latter term is defined as a person who "*at the time of the accident . . . was in an occupational status, earning or producing income.*"<sup>305</sup> The plain words of this provision would produce a harsh effect, barring the temporarily, recently or seasonally unemployed from benefits even though they had maintained the mandated no fault insurance. The definition, therefore, invites judicial interpretation.

Basic income continuation benefits are subject to an overall maximum of \$5200 and a weekly limit of \$100.<sup>306</sup> Insurers must offer additional optional income loss benefits up to \$35,000 per year.<sup>307</sup>

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300. 1983 N.J. Laws at 2044.

301. *Id.* at 2041-43.

302. *Id.* at 2052.

303. *Id.* at 2041.

304. *Id.* at 2043. Hospital expenses include "the cost of medical supplies such as prescribed drugs and medicines; blood and blood plasma; artificial limbs and eyes; surgical dressings, cases, splints, trusses, braces, crutches, rental of wheelchair, hospital bed or iron lung; oxygen and rental of equipment for its administration." *Id.*

305. *Id.* at 2042, 2045 (emphasis added).

306. *Id.* at 2045.

307. N.J. STAT. ANN. § 39:6A-10 (West 1983).

*Death (Survivor) Benefits; Funeral Expenses* — If an income producer dies as a consequence of his automobile accident injuries his income benefits are payable to a surviving spouse or to surviving children or to his estate.<sup>308</sup>

Reasonable funeral expenses not exceeding \$1000 are provided for the death of any one person in a car accident.<sup>309</sup>

*Substitute Services* — Payment for essential substitute services the injured or deceased would have performed for himself or his family are reimbursed up to \$12 per day with a total limit of \$4380.<sup>310</sup>

*Offsets; Deductibles* — First party payments are reduced by benefits collectible under Workers' Compensation and employees' temporary disability statutes, Medicare, and collected federal benefits for military personnel.<sup>311</sup>

The 1983 revision of New Jersey's insurance law has added a new section<sup>312</sup> offering a variety of offsets and deductibles to the purchaser of no fault coverage. These apply only to the named insured and relatives residing in the same household. The insured may elect:

- (a) medical benefits deductibles of \$500, \$1000 and \$2500 applicable to one person in one accident;
- (b) to exclude from PIP coverage income continuation, essential services, death and funeral benefits — in effect retaining only medical expense coverage;
- (c) a "setoff option" whereby the insurer paying medical benefits has a lien on any recovery by an injured person for noneconomic loss not exceeding twenty percent of the award, judgment or settlement.<sup>313</sup>

*Contribution Among Insurers* — If two or more insurers

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308. 1983 N.J. Laws 2045.

309. *Id.* at 2046.

310. *Id.* at 2045.

311. *Id.* at 2046.

312. *Id.* at 2050.

313. This new section also provides that an attorney's contingent fee is to be computed on the amount of the arbitration award, judgment or settlement less the amount of the setoff. An attorney may be reimbursed, for costs actually incurred, out of the setoff. *Id.*

are liable to pay first party benefits, any insurer paying is entitled to recover an equitable pro rata share from the other insurer(s) by the medium of inter-company arbitration or agreement.<sup>314</sup>

*Tort Options* — One of two tort options must be elected by a person required to maintain PIP coverage. This is a new feature of the 1984 no fault act.<sup>315</sup>

Under the first option,<sup>316</sup> an owner, registrant, operator or occupant of an automobile to which PIP coverage applies is exempted from tort liability to a covered person for noneconomic loss if:

- (a) the injury is to soft tissue,<sup>317</sup> and
- (b) medical expenses, exclusive of hospital, x-ray and diagnostic expenses, are less than \$200.

The first option also governs the *right to recover* for noneconomic loss of any person eligible for no fault benefits but who is not required to maintain PIP coverage and is not a member of the named insured's family.

Under the second option,<sup>318</sup> an owner, registrant, operator or occupant of a PIP covered automobile may be exempted from tort liability for noneconomic loss if the medical expense incurred by the injured person is less than \$1500, exclusive of hospital, x-ray and diagnostic expenses. The second tort option applies to the *right to recover* for noneconomic loss of any person who fails to maintain mandated PIP coverage. The \$1500 threshold is to be adjusted annually to conform to fluctuations in the National Consumer Price Index for professional services.

No exemption from tort liability either under the first or second option applies if the injury results in death, permanent disability or disfigurement, permanent loss of a bodily function or loss of a body member.

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314. N.J. STAT. ANN. § 39:6A-11 (West 1983).

315. 1983 N.J. Laws at 2052.

316. *Id.* at 2052-53.

317. "Bodily injury confined solely to the soft tissue, for the purpose of this section means, injury in the form of sprains, strains, contusions, lacerations, bruises, hematomas, cuts, abrasions, scrapes, scratches and tears confined to the muscles, tendons, ligaments, cartilages, nerves, fibers, veins, arteries and skin of the human body . . . ." *Id.*

318. *Id.* at 2053-54.

The tort options provisions become effective July 1, 1984. If any provision of the second option is declared unconstitutional, the entire second option falls.

Election of one of the tort options must be in writing by the named insured and applies only to the named insured, spouse and child or children residing in the named insured's household. If the named insured fails to make an election, the first option shall be deemed in effect.<sup>319</sup>

*Distinctive Features* — The 1983 amendments established a new agency,<sup>320</sup> the New Jersey Automobile Risk Exchange<sup>321</sup> to operate on a nonprofit, non-loss basis.

A continued, special provision of New Jersey's law is that evidence of amounts collectible in first party benefits is inadmissible in an injured party's action for noneconomic loss.<sup>322</sup>

The new section permitting deductibles of \$500 to \$2500 for medical expense benefits is a major change. By electing a deductible, the vehicle owner can reduce his premiums but at the risk of greater out of pocket detriment if he suffers personal injury in an accident. Even more radical in modifying the protection of a no fault system, the 1983 amendments allow the PIP insured to forego entirely wage continuation, essential services, death and funeral benefits. These provisions in practical effect make it possible for the insured to reduce no fault coverage to a Medical Payments policy eliminating the important protection of income loss replacement. The deductibles and exclusions in New Jersey's new law, resembling similar features in the Massachusetts and Florida schemes, represent a retreat from the no fault philosophy of requiring the automobile owner to provide protection against all basic economic loss.

The mandatory tort option election, however, must rank as

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319. *Id.* at 2054-56.

320. *Id.* at 2056-57.

321. The Exchange, of which all licensed insurers must be members, will apparently compensate members for claims for non-economic loss where the injured eligible party did not elect one of the tort limitation options but nonetheless has the benefit of the first (\$200 threshold) option. This situation can arise if a passenger in the insured car who is not a named insured or member of the named insured's household or person obligated to purchase PIP coverage is injured. He or she would have had no occasion to elect option 1 or 2; the statute makes option 1 applicable. *Id.*

322. *Id.* at 2049.

the most distinctive innovation introduced by the 1983 amendments. The first "basic" option is relatively standard; an insured has tort immunity from a suit for noneconomic damages by an injured party if the latter has suffered only a soft tissue injury and medical expenses do not reach the figure of \$200. This is a minimal monetary threshold but, it must be emphasized, the \$200 does not include hospital and diagnostic costs.

By contrast, the second option grants tort liability exemption from a suit for noneconomic loss by a person entitled to no fault benefits if his or her medical expenses (again, exclusive of hospital and diagnostic charges) are less than \$1500. This option will, presumably, cost more in premiums than the first but provide a much higher level of tort immunity to the insurance purchaser. It should be noted that the second option will govern the right to recover for noneconomic loss of any person who is required by law to maintain PIP coverage and fails to do so.

The legislative purpose of these recent amendments, as revealed in the title of the Act, is to afford New Jersey vehicle owners a "freedom of choice." Reduced protection for the insured — by electing deductibles and exclusions — can be traded-off for lower premiums. Enlarged immunity from suits for pain and suffering damages can be obtained by selecting the second tort option at a higher premium cost. While these choices permit a greater measure of selection and self-determination for the consumer, at the same time, they dilute the no fault quality of New Jersey's scheme. There is the possibility that the second tort option, because it reduces the right of recovery by claimants for noneconomic loss, will be subject to constitutional challenge.

## NEW YORK

*Required Insurance* — New York is a compulsory insurance state; for almost thirty years, the state has made proof of financial security a condition precedent to the registration of a motor vehicle.<sup>323</sup> An owner's or operator's motor vehicle liability

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323. The Motor Vehicle Financial Security Act of 1956 (N.Y. VEH. & TRAF. LAW §§ 310-321 (McKinney 1970 & Supp. 1983-1984)) supplemented existing legislation, the Motor Vehicle Safety Responsibility Act of 1941 (N.Y. VEH. & TRAF. LAW §§ 330-368 (McKinney 1970 & Supp. 1983-1984)). Section 312 conditions registration of a motor vehicle upon proof of financial security by insurance, bond or deposit of security.

policy must provide limits of at least \$10,000 for bodily injury to or \$50,000 for the death of one person and \$20,000 for bodily injury to or \$100,000 for death of two or more persons, and \$5000 property damage,<sup>324</sup> as well as uninsured motorist coverage.<sup>325</sup>

New York's no fault statute, the Comprehensive Automobile Insurance Reparations Act, became effective on February 1, 1974.<sup>326</sup>

*Covered Vehicles* — Vehicles used on public highways and propelled other than by muscular power are covered, including trailers, fire and police vehicles. Specifically excluded are farm equipment, construction equipment on the contract site and motorcycles.<sup>327</sup>

*Covered Persons* — The class of covered persons includes the named insured, members of his household, occupants of the insured vehicle and pedestrians injured through operation of the insured vehicle.<sup>328</sup>

For accidents within the state, entitlement to first party benefits extends to persons other than occupants of another vehicle or motorcycle. Occupants of a bus or school bus, however, must look to their own no fault insurance, if any, as primary coverage.<sup>329</sup>

The named insured and members of his household are covered for injuries anywhere in the United States or Canada arising out of the operation of an uninsured vehicle or motorcycle, and for injuries outside New York but within the United States or Canada arising out of the operation of an insured motor vehicle or motorcycle.<sup>330</sup> Effective January 1, 1983, a New York resident who is not an owner of a motor vehicle or a member of an insured's household is entitled to first party benefits for injuries

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324. N.Y. VEH. & TRAF. LAW § 345(b)(3) (McKinney Supp. 1983-1984).

325. N.Y. INS. LAW § 167 (McKinney 1966 & Supp. 1983-1984).

326. Act of Feb. 13, 1973, ch. 13, 1973 N.Y. Laws 56 (codified at N.Y. INS. LAW §§ 670-78 (McKinney Supp. 1983-1984)).

327. *Id.* § 671(6); N.Y. VEH. & TRAF. LAW § 311(2) (McKinney Supp. 1983-1984).

328. N.Y. INS. LAW § 671(10) (McKinney Supp. 1983-1984).

329. *Id.* § 672.

330. *Id.* § 672(1)(a), (b).

outside New York but within the United States or Canada arising out of the operation of the insured vehicle.<sup>331</sup>

Insurers may exclude from coverage a person intentionally causing his injury, a person operating a motor vehicle while intoxicated or drug-impaired, committing a felony, engaging in a speed contest, operating or occupying a stolen vehicle or his own uninsured vehicle, or repairing or servicing a motor vehicle as part of such business and on business premises.<sup>332</sup>

Occupants of motorcycles are not entitled to first party benefits under the statutory insurance requirements for owners of motorcycles or owners of motor vehicles.<sup>333</sup>

*Covered Uses* — The law refers only to “use or operation” of a motor vehicle. However, the Mandatory Personal Injury Protection Endorsement of New York defines use or operation to include loading and unloading the vehicle and occupying the vehicle to mean in, upon, entering into or alighting from the vehicle.

Excluded uses parallel the activities engaged in by excluded persons as described in the preceding section: use of a motor vehicle while intoxicated, committing a felony, escaping arrest, racing or servicing a vehicle on business premises.

*Benefits, Generally* — New York’s no fault law prescribes an aggregate limit of \$50,000.<sup>334</sup> Sublimits qualify work loss and substitute services reimbursements.

Benefits are payable as loss is incurred and are overdue if not paid within thirty days of proof of loss. Overdue benefits are subject to interest of two percent per month and may entitle the claimant to recover his attorney’s reasonable fee.<sup>335</sup> In a dispute with an insurer concerning the insurer’s obligation to pay benefits on the amount thereof, the claimant may submit the dispute to arbitration. The complex network of arbitration systems developed by administrative regulation is summarized in the subsequent section on arbitration. The statute contains no special

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331. *Id.* § 672(1)(c).

332. *Id.* § 672(2).

333. *Id.* § 672(1), (6).

334. *Id.* § 671(1).

335. *Id.* § 675(1).

limitations period applicable to no fault claims; presumably the three year personal injury (negligence) limitation and the six year period for contract actions would apply.<sup>336</sup>

Optional additional no fault protection for "extended economic loss" may be purchased by the named insured and is described in the Additional Personal Injury Protection Endorsement.

*Medical Benefits* — No fault payments cover all necessary expenses for medical, surgical, nursing, dental, hospital, x-ray, ambulance, and prosthetic services, prescription drugs, psychiatric, physical and occupational therapy, treatment in accordance with religious method of healing recognized by New York law, and any other professional health services. No time limitation is placed on payment of these expenses provided that within one year of the accident it is ascertainable that additional medical costs may be incurred.<sup>337</sup>

Medical charges, however, are not subject simply to a caution that they be reasonable. New York law mandates the application of the medical fee schedule established by the Workers' Compensation Board to motor injuries. The no fault law prohibits any health service provider to demand payment in excess of the authorized applicable fee.<sup>338</sup>

Coordination of PIP benefits with the insured's medical coverage by authorized accident and health insurers or nonprofit health service corporations is permissible. The medical coverage so provided will reduce the \$50,000 aggregate limit of liability for basic economic loss and also reduce the premium to be paid by the insured.<sup>339</sup>

*Income Loss Benefits* — The work loss provided by the no fault statute is eighty percent of the actual loss with a maximum of \$1000 per month for a period of three years from the date of

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336. N.Y. CIV. PRAC. LAW §§ 213, 214 (McKinney 1983).

337. N.Y. INS. LAW § 671(1)(a) (McKinney Supp. 1983-1984).

338. *Id.* § 678(3). The Medical Fee Schedule is published in N.Y. ADMIN. CODE tit. 11, app. 17-A (1983).

339. N.Y. INS. LAW § 572(7) (McKinney 1966). The provision entitled "Exclusion of Medical Expense from Mandatory Personal Injury Protection Endorsement" is found at N.Y. ADMIN. CODE tit. 11, § 65.14 (1977).

the accident. But, if an employee is entitled to payments from the employer for work loss, he will not receive first party benefits to the extent that employer benefits do not result in a reduction in income or level of future benefits due upon a subsequent illness or injury.<sup>340</sup>

Regulations of the New York department of insurance provide that loss of earnings need not be limited to actual level of earnings but may include projected future earnings. If an unemployed person is eligible for unemployment or state disability benefits, the no fault insurer is required to make payments up to the level of unemployment benefits.<sup>341</sup>

The \$1000 monthly work loss benefit includes expenses the applicant incurs in obtaining services in lieu of those he would have performed for income; but the cost of such services is not subject to a twenty percent offset.

*Other Reasonable and Necessary Expenses* — Reasonable and necessary expenses incurred as a result of the injury are payable up to \$25 per day for a period of one year.<sup>342</sup>

*Death Benefits* — The New York statute does not specify survivor or funeral expense benefits. Rather, it states that "basic economic loss" does not include loss arising from the death of an accident victim and prescribes that the estate of a covered person, other than an occupant of another motor vehicle or motorcycle is entitled to a death benefit of \$2000 in addition to first party payments for basic economic loss.<sup>343</sup>

*Offsets* — First party benefits are reduced by amounts recovered or recoverable under federal or state laws providing (a) Workers' Compensation, (b) disability payments and (c) Medicare benefits, provided the medical benefits utilized do not reduce coverage for subsequent injuries or illnesses.<sup>344</sup>

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340. N.Y. INS. LAW § 671(1)(b), (c) (McKinney Supp. 1983-1984).

341. N.Y. ADMIN. CODE tit. 11, § 65.15(n)(2) (1982). These benefits are not subject to the 20% offset from loss of earnings provided in N.Y. INS. LAW § 671(2) (McKinney Supp. 1983-1984).

342. N.Y. INS. LAW § 671(1)(c) (McKinney Supp. 1983-1984).

343. *Id.* § 672(1)(d).

344. *Id.* § 671(2)(b).

Where more than one source of first party benefits is available, the insurer is obligated for an amount equal to the maximum policy coverage divided by the number of available sources of mandatory no fault benefits. An injured person may not recover duplicate benefits for the same loss under no fault insurance.

*Reimbursement; Subrogation* — An insurer paying first party benefits is entitled to reimbursement from any settlement or judgment for personal injury damages resulting from an action by a covered person against a noncovered person. The company has a lien to the extent of its payments. The insured must hold in trust for the insurer all rights of recovery, granted under the tort action section<sup>345</sup> and may not compromise an action without consent of the company or the court unless the settlement exceeds \$50,000. If a covered person has failed to commence his personal injury action against the noncovered person within two years of accrual, such failure operates to give the insurer a cause of action for first party benefits. The insurance company is also subrogated to the rights of the insured for any payment it has made for extended economic loss.

An insurer may recover benefits paid from the insurer of the party at fault with three limitations. First, one of the vehicles involved must weigh more than 6500 pounds unloaded, or be a vehicle transporting persons or property for hire. Second, in the case of a passenger of a bus, the passengers' no fault insurer has no right of recovery from the insurer of the bus or school bus. Third, inter-company claims must be submitted to mandatory arbitration.<sup>346</sup>

*Nonresident Motorists; Out-of-State Accidents* — The named insured and members of his household are entitled to first party benefits for accidents anywhere in the United States or Canada. A New York resident who is neither a vehicle owner or member of an owner's household is covered for first party benefits for loss arising out of the use of the insured vehicle any-

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345. *Id.* § 673(2).

346. *Id.* § 674; N.Y. ADMIN. CODE tit. 11, § 65.10 (1978).

where in the United States or Canada.<sup>347</sup>

Every insurer transacting business in New York which sells motor vehicle liability policies in any state or in Canada must include, and such policy will be construed to embody, coverage satisfying New York's liability and no fault requirements.<sup>348</sup>

*Tort Actions and Exemption* — The owner of a properly insured motor vehicle or motorcycle may not be sued in tort by a covered person for basic economic loss. He is subject to liability for noneconomic detriment and economic loss in excess of basic benefits only if the claimant has sustained a serious injury.<sup>349</sup>

Serious injury is defined as personal injury resulting in death, dismemberment, significant disfigurement, fracture, permanent loss or use of a body organ, member, function or system, consequential limitation of use of a body organ or member, significant limitation of use of a body function or system, or a non-permanent injury or impairment which prevents performance of substantially all of the customary activities of the injured person for at least 90 days of the 180 day period following the occurrence of the injury or impairment.<sup>350</sup>

*Arbitration* — The New York statute accords the claimant, who has a dispute with the insurer over first party benefits, the option to submit the controversy to arbitration.<sup>351</sup> The insurance department has established a multiple forum system<sup>352</sup> based on a classification of issues. All arbitration requests come initially to the department. If the dispute cannot be settled, the matter is heard by one or more of the following forums:

a. *Insurance Department Arbitration (IDA)*

Insurance Department Arbitration handles the issue of whether or for how long a claim is overdue at the time it was paid. The Insurance Department's jurisdiction also includes whether the correct amount of interest or attorney's fees on an

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347. N.Y. INS. LAW § 672(1)(b), (c) (McKinney Supp. 1983-1984).

348. *Id.* § 676.

349. *Id.* § 673.

350. *Id.* § 671(4).

351. *Id.* § 675(2).

352. N.Y. ADMIN. CODE tit. 11, § 65.16(c) (1982).

overdue claim was paid.

b. *American Arbitration Association (AAA) Expedited Arbitration*

Expedited Arbitration involves the resolution of any of the following issues as a condition precedent to payment of first party benefits or additional first party benefits:

1. Whether a policy was in force on the date of the accident;
2. Whether the applicant qualifies as an eligible injured person;
3. Whether the applicant was excluded from coverage under the policy exclusions;
4. Whether the applicant violated policy conditions resulting in exclusion from coverage;
5. Whether the injuries arose out of the use or the operation of a motor vehicle;
6. Whether a valid assignment of no fault benefits exists;
7. Whether the policy includes a family deductible applicable to the applicant's claim.

c. *Health Service Arbitration (HSA)*

This forum resolves disputes relating to health services rendered in New York State. Issues include whether fees conform to the fee schedule promulgated by the insurance commissioner,<sup>353</sup> and whether treatment or hospitalization is unnecessary or unrelated to the accident injury.

d. *AAA Arbitration*

Disputes involving issues not otherwise committed to IDA, Expedited Arbitration or HSA are handled in this forum.

e. *Master Arbitration*

An award by an arbitrator may be vacated or modified by a master arbitrator on grounds specified in the insurance department's regulations.<sup>354</sup> The decision of the master arbitrator is binding unless (a) grounds for review, provided in the state's procedural law, are present,<sup>355</sup> or (b) the award is \$5000 or more,

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353. N.Y. INS. LAW § 678 (McKinney Supp. 1983-1984); N.Y. ADMIN. CODE tit. 11, § 68 (1982). The Insurance Department's fee schedules conform to the schedules promulgated by the Workers' Compensation Board for medical, dental, hospital, and other professional health services.

354. N.Y. ADMIN. CODE tit. 11, § 65.17 (1982); N.Y. INS. LAW § 675(2) (McKinney Supp. 1983-1984).

355. N.Y. INS. LAW § 675(2) (McKinney Supp. 1983-1984) (referring to N.Y. CIV.

in which case either party may institute a court action for a de novo adjudication.<sup>356</sup>

*Distinctive Features* — Unusual elements of New York's no fault law which must arrest the attention of the practitioner include coordination of benefits, absence of survivor benefits, arbitration procedures and regulation of fees of attorneys and provisions for health care.

The statute permits qualified health and accident insurers and nonprofit medical and hospital service corporations to offer alternative and equivalent basic loss coverage. Where a policyholder elects this option, he is not entitled to basic loss payments under the statute and his no fault premiums must be reduced to reflect the substituted protection.<sup>357</sup>

The usual survivor benefits are not mentioned in the statute. Rather, a death benefit is payable to the estate. Presumably, a statutory wrongful death action is available, but such a claim would require proof of fault.

The arbitration system described in the preceding section is unquestionably unique. From a brief reference in the statute to a claimant's right to submit a controversy to arbitration,<sup>358</sup> the state's insurance department has extrapolated an elaborate scheme of four-tier dispute resolution with three possibilities of review. How well the elaborate mechanism succeeds in achieving fair results and in avoidance of de novo court litigation is not assessed.

For services of attorneys throughout the arbitration network, or otherwise in pursuit of an applicant's valid claim for benefits, the administrative rules set specific fees pegging the maximum amounts which may be demanded of and received from an insurer.<sup>359</sup>

Finally, the statute directs the superintendent of insurance to adopt limitations on charges by providers of health services in conformity with fee schedules established by the chairman of

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PRAC. LAW art. 75).

356. N.Y. INS. LAW § 675(2) (McKinney Supp. 1983-1984).

357. *Id.* § 672(7).

358. *Id.* § 675(2).

359. *Id.* § 675(1); N.Y. ADMIN. CODE tit. 11, § 65.15(h), .16(c)(8) (1982).

the Workers' Compensation Board.<sup>360</sup> Medical, dental, hospital and other health care fees have been promulgated,<sup>361</sup> are in effect and have thus far been upheld by the courts as consistent with the statutory mandate to the superintendent.

The general caution to be addressed to practitioners representing a client whose claim comes within the ambit of New York's no fault law is to consult the administrative regulations. Therein lie the controlling elaborations of the statute's brief and general language.

## NORTH DAKOTA

*Insurance Requirements* — North Dakota's motor vehicle law requires deposit of security following an accident and proof of financial responsibility following failure to pay a judgment.<sup>362</sup> These security provisions are satisfied by an owner's or operator's motor vehicle liability policy providing the statutory limits of \$25,000/\$50,000/\$10,000.<sup>363</sup> Every liability policy must also include uninsured motorist coverage.<sup>364</sup> The no fault law, North Dakota Auto Accident Reparations Act, effective January 1, 1976,<sup>365</sup> imposes an obligation upon vehicle owners to maintain security continuously for first party and liability protection throughout the period of operation of the vehicle in the state.<sup>366</sup>

*Covered Vehicles* — The statute defines motor vehicle as a vehicle required to be registered, with more than three load-bearing wheels, designed for operation upon public roads and operated other than by muscular power. It includes a trailer attached to a motor vehicle.<sup>367</sup>

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360. N.Y. INS. LAW § 678 (Supp. 1983-1984).

361. N.Y. ADMIN. CODE tit. 11, app. 17-A (1983).

362. N.D. CENT. CODE § 39-16-05, -16.1-05, -16.1-08, -16.1-09 (1980).

363. *Id.* § 39-16.1-11.

364. *Id.* § 26-02-42 (1980 & Supp. 1983).

365. North Dakota Auto Accident Reparations Act, ch. 265, 1975 N.D. Sess. Laws 796 (codified at N.D. CENT. CODE § 26-41-01 to -19 (1980 & Supp. 1983)).

366. N.D. CENT. CODE § 26-41-04 (1980) (security may be provided by a policy of insurance or by self-insurance).

367. *Id.* § 26-41-03(8) (1980 & Supp. 1983).

*Covered Uses* — The Act refers to accidents arising out of the operation of a motor vehicle and amplifies "operation" to include maintenance or use, but to exclude the business of repairing and servicing unless performed off business premises. "Use" includes occupying — being in or upon a motor vehicle or entering into or alighting from a motor vehicle. Loading and unloading are included only if occurring while the person is occupying a motor vehicle.<sup>368</sup>

*Covered Persons* — Persons entitled to benefits are the owner of a secured motor vehicle and relatives residing in the owner's household. They are covered while occupying any vehicle or as pedestrians struck by a motor vehicle or motorcycle. Any other person is covered while an occupant of the secured vehicle or as a pedestrian struck by the secured vehicle.<sup>369</sup>

Persons not entitled to basic or optional excess coverage are occupants without the permission of the owner, occupants of an owned, unsecured vehicle, persons engaged in a speed contest and those intentionally causing injury to themselves or others.<sup>370</sup>

*Benefits, Generally* — North Dakota's no fault law establishes a limit of \$15,000 per person for mandatory basic loss coverage, regardless of the number of entitled persons or obligated insurers involved.<sup>371</sup>

Insurers must make available optional added coverage up to \$40,000 and may offer other benefits and limits. Optional coverage may be written to duplicate or to be in excess of collateral source payments.<sup>372</sup>

Basic and excess benefits are overdue if not paid within thirty days of proof of loss. Overdue payments bear interest of eighteen percent per annum.<sup>373</sup>

If basic or optional benefits have not been paid, the injured person may commence an action within two years of suffering

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368. *Id.* § 26-41-03(10) to (11).

369. *Id.* § 26-41-07 (1980). *See id.* § 26-41-03(14) (1980 & Supp. 1983) (defining relative as a person related to the owner by blood, marriage, or adoption or a foster child).

370. *Id.* § 26-41-08 (1980).

371. *Id.* § 26-41-03(2) (1980 & Supp. 1983).

372. *Id.* § 26-41-06 (1980).

373. *Id.* § 26-41-09.

the loss or four years of the date of the accident, whichever first occurs. If no basic or excess benefits have been paid to the decedent or his survivors, an action for survivors' income loss, substitute services and burial expenses may be commenced within one year of the death or four years of the accident, whichever is earlier. If benefits have been paid either to the injured person or survivors, an action seeking further benefits may be commenced no later than two years following the last payment.<sup>374</sup>

Basic no fault benefits are exempt from garnishment, attachment and execution. The right to future, non-medical benefits may not be assigned.<sup>375</sup>

*Medical Benefits* — First party reimbursement covers reasonable charges for medical, surgical, dental, x-ray, hospital, nursing, ambulance, and prosthetic services, remedial treatment and care in accordance with a recognized religious method of healing. No dollar sublimit applies to medical expenses.<sup>376</sup>

*Income Loss Benefits* — Loss of income benefits are subject to a weekly maximum of \$150 per person. Work loss means eighty-five percent of the income the accident victim would normally have received for gainful activity, less income from substitute work actually performed or unreasonably refused.<sup>377</sup>

*Survivor Benefits* — Loss sustained by survivors after the accident victim's death and during their dependency consists of loss of support they would have received out of the decedent's income up to a maximum of \$150 per week. Such benefits may be paid directly to survivors without the appointment of an administrator or executor.<sup>378</sup>

*Substitute Services Benefits; Funeral Expenses* — Expenses incurred in obtaining ordinary services the injured or deceased accident victim would have performed for his household are compensable in an amount not exceeding \$15

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374. *Id.* § 26-41-16.

375. *Id.* § 26-41-15.

376. *Id.* § 26-41-03(7) (1980 & Supp. 1983).

377. *Id.* § 26-41-03(2), (21).

378. *Id.* § 26-41-09(1).

per day.<sup>379</sup>

The maximum prescribed for funeral and burial expenses is \$1000.<sup>380</sup>

*Priority and Coordination of Insurance* — No fault insurance is primary except for a setoff of Workers' Compensation benefits.

The no fault insurer of a secured vehicle is obligated to pay benefits to occupants of and to pedestrians injured by the secured vehicle. The no fault insurer of an injured person pays benefits to such person if injured as an occupant of or pedestrian injured by an unsecured vehicle. Similarly, an individual's insurer provides primary coverage if the person is injured while occupying a bus; if not insured, the individual is entitled to no fault benefits from the insurer of the bus. The same priority principle applies if the injured individual is an occupant of a secured vehicle transporting persons under a ridesharing agreement.

Insurers, which are not basic no fault insurers, may coordinate their reparations for economic loss with the first \$5000 of basic no fault benefits, provided that an equitable adjustment of premiums reflects such coordination of benefits.<sup>381</sup>

*Subrogation* — A no fault insurer paying benefits is subrogated to the rights of the injured person against any person or organization other than a secured person. Such insurer also has the right to recover basic benefits paid from the liability insurer of a secured person if the injury is serious or if one of the accident vehicles weighs more than 6500 pounds unloaded. A dispute among insurers must be resolved by inter-company arbitration but the recovery may not exceed the liability limits of the secured person's policy.<sup>382</sup>

*Extraterritorial Provisions* — If an accident occurs outside North Dakota but within the United States or Canada, the lia-

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379. *Id.* § 26-41-03(15), (20).

380. *Id.* § 26-41-03(2).

381. *Id.* § 26-41-10 (Supp. 1983).

382. *Id.* § 26-41-13 to -14 (1980).

bility and no fault provisions of the North Dakota insurance policy shall be deemed to comply with the limits prescribed by the laws of the applicable jurisdiction.<sup>383</sup>

*Tort Actions and Exemption* — A secured person is exempt from liability for damages for:

- (a) economic loss to the extent that the injured person qualifies for basic no fault benefits;
- (b) noneconomic loss unless the injury is serious.<sup>384</sup>

Both a monetary and verbal definition of serious injury appears in the statute. The monetary threshold is \$1000 in reasonable charges for medical expenses. The verbal threshold requires that the bodily injury result in death, dismemberment, permanent disfigurement or disability in excess of sixty days.<sup>385</sup>

*Other Provisions* — The North Dakota statute provides definitions of various ridesharing arrangements.<sup>386</sup> In such circumstances, the no fault insurer of the passenger provides primary coverage.

The law also sets forth an assigned claims plan.<sup>387</sup>

A 1983 amendment prohibits stacking of no fault benefits.<sup>388</sup>

#### PENNSYLVANIA\*

*Required Insurance* — With the enactment of the Pennsylvania No-Fault Motor Vehicle Act,<sup>389</sup> effective July 19, 1975, every owner of a motor vehicle must maintain liability coverage and security for payment of personal injury no fault benefits.<sup>390</sup> All motor vehicle liability policies issued in the state must in-

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383. *Id.* § 26-41-11(2).

384. *Id.* § 26-41-12 (1980 & Supp. 1983).

385. *Id.* § 26-41-03(18) (1980 & Supp. 1983).

386. *Id.* § 26-41-03(2) to (4).

387. *Id.* § 26-41-19.

388. *Id.* § 26-41-10.1 (Supp. 1983).

389. Act of July 19, 1974, Pub. L. No. 74-176, 1974 Pa. Laws 489 (codified at PA. STAT. ANN. tit. 40, § 1009.101-.701 (Purdon Supp. 1982-1983)).

390. PA. STAT. ANN. tit. 40, § 1009.104(a) (Purdon Supp. 1982-1983). The required liability coverage is \$15,000/\$30,000/\$5000. Pennsylvania's no fault scheme does not encompass property damage.

\* See ED. NOTE, p. 403.

clude uninsured motorist coverage.<sup>391</sup> The commissioner of insurance is obligated to establish a plan to make no fault and tort liability coverages available to all vehicle owners.<sup>392</sup>

*Covered Vehicles* — Every vehicle required to be registered is included in the definition of motor vehicle under the no fault law.<sup>393</sup>

*Covered Persons* — The “insured” means the named insured, spouse or other relative, a minor in custody of the named insured or relative residing in the household of the named insured.<sup>394</sup>

For accidents in Pennsylvania, any victim or survivor of a victim is entitled to basic loss benefits. For accidents outside the state, a victim or survivor is entitled to benefits if the victim was an insured or driver or occupant of an insured vehicle.<sup>395</sup>

Noncovered persons are converters, those intentionally injuring themselves or others, and passengers and operators of a motorcycle.<sup>396</sup>

*Covered Uses* — The no fault plan encompasses maintenance or use of a motor vehicle as a vehicle including occupying, entering, and alighting from it. Excluded uses are repairing and servicing, unless occurring off the business premises, and loading or unloading, unless while occupying, entering or leaving the vehicle.<sup>397</sup>

*Benefits, Generally* — No aggregate maximum of first party payments is stipulated in the no fault Act, but individual limits are specified for categories other than medical expenses.

No fault benefits are payable monthly as loss accrues. Overdue payments bear interest at the rate of eighteen percent per

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391. *Id.* § 2000.

392. *Id.* § 1009.105.

393. *Id.* § 1009.103.

394. *Id.*

395. *Id.* § 1009.201(a)-(b).

396. *Id.* § 1009.103, .208(a)-(b).

397. *Id.* § 1009.103.

annum.<sup>398</sup> Claims are to be paid without subtraction of the required collateral source offsets<sup>399</sup> if such benefits have not been paid. But the obligor is entitled to reimbursement from the person obligated to pay or from the claimant who actually receives such benefits.<sup>400</sup>

The statute of limitations for a claim by an injured party for unpaid no fault benefits is two years from the date of suffering the loss or four years from the date of the accident whichever is earlier.<sup>401</sup> An action for unpaid survivor benefits must be commenced within one year of the victim's death or four years from the date of the accident, whichever is earlier.<sup>402</sup>

Insurers are required by the Pennsylvania no fault Act to offer added benefits covering loss excluded by basic limits on allowable expenses, work loss, replacement services and survivor loss, and optional coverage for property damage, collision, and work loss in excess of the basic required benefits.<sup>403</sup>

*Medical Expenses* — The Pennsylvania no fault law treats reimbursable medical care charges under the statutory category of "allowable expenses."<sup>404</sup> No limit is prescribed. These expenses cover professional treatment, emergency services and medical and vocational rehabilitation care. The latter is further defined to encompass all "services necessary to reduce disability and to restore the physical, psychological, social and vocational functioning of a victim."<sup>405</sup> Examples are diagnostic and evaluation procedures, a variety of therapies, optometric, nursing, and training services. Reimbursement for treatment of injuries is predicated not only on the customary requirement of reasonable charges for necessary services, but also on the condition that the medical and rehabilitation care be dispensed by state approved facilities.<sup>406</sup>

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398. *Id.* § 1009.106(a)(1) — (2).

399. *Id.* § 1009.206.

400. *Id.* § 1009.106(a)(3).

401. *Id.* § 1009.106(c)(1). Actions on assigned claims must be commenced within 60 days of receipt of notice of rejection. *Id.* § 1009.106.(c)(4).

402. *Id.* § 1009.106(c)(2).

403. *Id.* § 1009.207(a).

404. *Id.* § 1009.103.

405. *Id.*

406. *Id.*

*Income Loss Benefits* — Basic work loss benefits may not exceed \$15,000<sup>407</sup> and include loss of income and reasonable expenses of a self-employed person for hiring an assistant or substitute to mitigate income loss. The monthly maximum for work loss is the actual monthly earnings figure, disclosed to the insurer by the insured prior to the accident, or \$1000 multiplied by a fraction representing average per capita income in Pennsylvania over average per capita income in the United States.<sup>408</sup> If work loss benefits are not taxable income, a subtraction not to exceed twenty percent of the loss of income is made to offset the tax advantage.<sup>409</sup> The statute incorporates specific directions for calculating work loss for the regularly employed, seasonally employed and unemployed.<sup>410</sup>

*Survivor Benefits* — A survivor, meaning spouse, child, parent, brother, sister or relative dependent upon the decedent for support<sup>411</sup> may recover an amount not exceeding \$5000.<sup>412</sup>

*Collateral Sources; Offsets* — The following benefits are to be subtracted from first party payments due an entitled accident victim:

- (a) Social Security (except under title XIX and Medicare "life-time" reserve days);
- (b) Workers' Compensation;
- (c) state mandated temporary non-occupational disability insurance;
- (d) other benefits received from government unless by statute these are made excess or secondary sources.<sup>413</sup>

The owner or operator of a motor vehicle may elect to provide security for basic loss benefits through a program or contract that will cover him, his family or survivors for payments contemplated by the no fault statute. In such case, all basic loss benefits shall be excess to benefits collectible under the elected

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407. *Id.* § 1009.202(b)(2).

408. *Id.* § 1009.202(b)(1).

409. *Id.* § 1009.206(b).

410. *Id.* § 1009.205.

411. *Id.* § 1009.103.

412. *Id.* § 1009.202(d).

413. *Id.* § 1009.206(a).

plan or contract. The no fault insurer shall reduce premiums to reflect benefits attributable to the substituted security.<sup>414</sup>

*Subrogation; Reimbursement; Indemnity* — If an individual receiving no fault benefits has a claim against one causing the injury based upon a determination of fault, the insurer has the right of subrogation for payment of no fault benefits in excess of minimum basic loss. Otherwise, an insurer has no right of subrogation to or reimbursement from a victim's recovery and no right of reimbursement from another insurer not acting as a reinsurer.<sup>415</sup>

An insurer has a right of indemnity against an individual who has converted a vehicle involved in an accident or intentionally injured himself or another for no fault payments covering the loss resulting from the accident.<sup>416</sup>

*Tort Liability and Exemption* — Tort liability for injury resulting from an accident in Pennsylvania is abolished except in the following cases:

- (a) the vehicle is not secured (insured)—(owner remains liable);
- (b) the vehicle is defective—(designer, manufacturer, repairer or servicer remains liable);
- (c) intentional injury (owner and operator remain liable);
- (d) the loss exceeds basic loss benefits.

A person remains liable for *non-economic* detriment if the accident results in:

- (a) death or serious and permanent injuries; or
- (b) the reasonable value of medical and other services exceeds \$750; or
- (c) the victim's impairment prevents performance of substantially all usual duties for more than sixty consecutive days; or
- (d) the injury consists of permanent and irreparable cosmetic disfigurement.<sup>417</sup>

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414. *Id.* § 1009.203(b)-(c).

415. *Id.* § 1009.111(a).

416. *Id.* § 1009.111(c).

417. *Id.* § 1009.301(a).

*Choice of Law; Out-of-State Accidents; Nonresidents* — Pennsylvania's statute addresses some of the problems of insurance coverage where interstate travel is involved. The motor vehicle owner who has complied with Pennsylvania's security requirements is deemed to have complied with the security requirements in any state in which the vehicle is operated.<sup>418</sup> Insurance contracts for payment of first party benefits must also include protection from tort liability to which the owner or operator may be exposed by application of the law of another state.<sup>419</sup>

The no fault law of the state in which the victim is domiciled on the date of the accident governs availability of basic loss benefits. If the domiciliary state does not have a no fault system in effect, then the choice of law rule points to the no fault plan of the state in which the accident occurred.<sup>420</sup> If the accident occurs in Pennsylvania, any victim or survivor is entitled to receive basic loss benefits provided by Pennsylvania's no fault law. If the accident is out of state, victims or survivors may receive Pennsylvania no fault benefits if the victim was an insured, or driver or other occupant of a secured vehicle.<sup>421</sup>

The right of a victim or survivor of a victim to sue in tort is determined by the law of the state of his domicile; if the victim is not domiciled in a state, the right to sue is governed by the law of the accident state.<sup>422</sup>

### *Distinctive Features*

*Release and Settlement of Claims* — Pennsylvania's no fault Act is one of the few statutes to impose discrete rules governing releases and settlements. It states that no fault benefits may not be denied because the injured person has executed a release or a settlement agreement. But a no fault claim for a net loss of \$2500 or less may be discharged by settlement upon a fixed amount to be paid in installments or by lump sum.<sup>423</sup> Otherwise, a claim may be discharged by settlement only if a court

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418. *Id.* § 1009.110(a).

419. *Id.* § 1009.110(b)(2).

420. *Id.* § 1009.110(c)(1).

421. *Id.* § 1009.201(a)-(b).

422. *Id.* § 1009.110(c)(2).

423. *Id.* § 1009.106(b).

has approved the settlement. The Act also provides for modifications of settlements because of changed circumstances or newly discovered evidence, and for setting aside an unconscionable or fraudulently procured settlement.<sup>424</sup>

*Exemption of Benefits from Garnishment* — No fault benefits for allowable expenses are exempt from garnishment, attachment and execution unless the creditor has provided products or services which qualify as allowable expense benefits.<sup>425</sup>

*Restoration of the Accident Victim* — The Pennsylvania law is unique in cataloging a very complete spectrum of medical and social services compensable under "allowable expenses." For example, no fault benefits may cover occupational licenses and tools, speech therapy, audiology and medical social services.<sup>426</sup> But the medical and vocational rehabilitation treatment must be at facilities accredited by the Pennsylvania department of health. Furthermore, the commissioner of insurance is charged with supervising and monitoring medical and rehabilitation services, the progress toward recovery of recipients of these services and the reasonableness of charges. This "Accountability Program" also directs the commissioner to conduct an ongoing evaluation of the no fault system.<sup>427</sup> In scope and detail, the Pennsylvania plan adopts a sophisticated approach to restoration of the whole accident victim to usefulness in society.

## UTAH

*Insurance Requirements* — Utah requires that an owner or operator be able to respond in damages for liability arising out of the ownership, maintenance or use of a motor vehicle.<sup>428</sup> Automobile liability policies must include uninsured motorist coverage unless rejected by the named insured.<sup>429</sup> Since January 1,

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424. *Id.* § 1009.106(b)(2)-(3).

425. *Id.* § 1009.106(f).

426. *Id.* § 1009.103.

427. *Id.* § 1009.109(c).

428. Safety Responsibility Act, UTAH CODE ANN. § 41-12-1(k) (1981). The liability limits are \$20,000/\$40,000/\$10,000. Alternatively, in lieu of the foregoing, there is a single limit of not less than \$30,000. *Id.*

429. *Id.* § 41-12-21.1.

1974,<sup>430</sup> every resident owner must maintain security for no fault as well as liability coverage throughout the registration period of the vehicle.<sup>431</sup> The no fault statute applies only to PIP and does not include property damage coverage.

*Covered Vehicles* — Motor vehicle, as defined in the no fault statute, is every vehicle required to be registered<sup>432</sup> excluding motorcycles.<sup>433</sup>

*Covered Uses* — Covered usage receives only tangential reference in the statute in the context of personal injuries sustained by the insured or a pedestrian in an accident “involving” a motor vehicle or by any other person while “occupying” the vehicle with consent of the insured.<sup>434</sup>

*Covered Persons* — The “insured” is defined as the named insured, his spouse or relative residing in the same household, or a person using the vehicle with permission of the owner.<sup>435</sup> A pedestrian is a covered person not occupying a motor vehicle or a motorcycle.<sup>436</sup>

An insurer may exclude from coverage a person occupying an uninsured vehicle owned by the insured, an unpermitted operator, or a person intentionally causing his injury or injured while committing a felony.<sup>437</sup>

*Benefits, Generally* — No aggregate sum of required benefits is specified by the Utah statute; instead, a minimum is prescribed for each category.<sup>438</sup>

Benefits are to be paid on a monthly basis as expenses are incurred, and are overdue if not paid within thirty-five days of reasonable proof. Failure of the insurer to make payment in-

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430. The Automobile No-Fault Insurance Act became effective on that date. Automobile No-Fault Ins. Act, ch. 55, 1973 Utah Laws 141.

431. UTAH CODE ANN. § 31-41-4(1) (1974).

432. *Id.* § 31-41-3(1) (1974 & Supp. 1983).

433. *Id.*

434. *Id.* § 31-41-7(1) (Supp. 1983).

435. *Id.* § 31-41-3(4) (1974 & Supp. 1983).

436. *Id.* § 31-41-3(6) (Supp. 1983).

437. *Id.* § 31-41-10 (1974).

438. *Id.* § 31-41-6 (1974 & Supp. 1983).

volves an interest penalty and also entitles the claimant to reasonable attorney's fees if he brings a successful contract action.<sup>439</sup>

*Medical Benefits* — An entitled person may recover up to \$2000 for necessary medical, surgical, x-ray, dental, rehabilitation, ambulance, hospital and nursing services, and prosthetic devices.<sup>440</sup> Payments are to be predicated on "reasonable value."<sup>441</sup> Medical benefits include expenses for non-medical, remedial services and treatment by a recognized religious method of healing.<sup>442</sup>

*Loss of Income* — Benefits cover eighty-five percent of loss of gross income and loss of earning capacity up to a maximum of \$150 per week for fifty-two consecutive weeks (\$7800).<sup>443</sup>

*Substitute Services* — The Act provides a "special damages allowance" not exceeding \$12 per day for a maximum of 365 days (\$4380) for payment of services the injured person would have performed for his household.<sup>444</sup>

*Death and Funeral Benefits* — Up to \$2000 compensation is payable to heirs of the accident victim.<sup>445</sup> Funeral expenses not to exceed \$1000 per person are also provided.<sup>446</sup>

*Subrogation; Arbitration* — An insurer which has paid first party benefits to its insured for injuries caused by a party who is or would be held legally liable is entitled to reimbursement from the insurer of the party at fault. Issues of liability and amount of reimbursement must be decided by binding arbitration between insurers.<sup>447</sup>

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439. *Id.* § 31-41-8 (1974).

440. *Id.* § 31-41-6(1)(a) (1974 & Supp. 1983).

441. *Id.* § 31-41-6(2).

442. *Id.* § 31-41-6(3).

443. *Id.* § 31-41-6(1)(b). Loss of income and payment for substitute services are combined in Utah's no fault statute under the category of disability benefits.

444. *Id.* § 31-41-6(1)(b)(ii).

445. *Id.* § 31-41-6(1)(d).

446. *Id.* § 31-41-6(1)(c).

447. *Id.* § 31-41-11 (1974).

*Collateral Sources; Offsets* — First party payments are reduced by any amounts a person “receives or is entitled to receive” as a result of a motor vehicle accident (a) from a Workers’ Compensation plan or similar statutory source, and (b) from the United States while on active duty in military service.<sup>448</sup>

*Tort Liability and Immunity* — An owner whose vehicle is not covered by the required security at the time of an accident enjoys no tort immunity and is personally liable for payment of no fault benefits.<sup>449</sup>

A person covered by no fault protection under the statute may not maintain an action for general damages unless the accident has caused (a) death, dismemberment or fracture, permanent disability or permanent disfigurement, or (b) medical expenses exceeding \$500.<sup>450</sup> This provision of the statute places Utah among the states that prescribe a twofold threshold for recovery of pain and suffering damages: the serious injury, verbal threshold or, alternatively, a minimum monetary aggregate of medical expenses. The proof of either one entitles the injured party to a tort claim.

*Distinctive Feature* — Utah’s no fault Act contains a provision not found in most comparable state statutes. It requires the state’s insurance department to conduct a “relative value” study of the services involved in diagnosis, treatment and rehabilitation of injured persons in the most populous county. The objective is assignment of a “unit value and median charge to each type of service and accommodation.”<sup>451</sup> The reasonable cost, for purposes of first party compensation, is then to be determined by applying the unit value or median charge to the service or accommodation in question.

The statute also authorizes courts to designate an impartial medical panel to examine the claimant and give testimony concerning the reasonable value of the medical expenses claimed.

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448. *Id.* § 31-41-7(3) (1974 & Supp. 1983).

449. *Id.* § 31-41-9(2) (1974).

450. *Id.* § 31-41-9(1).

451. *Id.* § 31-41-6(2) (1974 & Supp. 1983).

## GROUP II STATES

## ARKANSAS

*Required Insurance* — Arkansas requires that an owner or operator of a motor vehicle be able to satisfy a judgment up to the amounts of \$25,000 for injury to one person, \$50,000 for injury to two or more persons and \$15,000 for damage to property. This security requirement may be met by a liability insurance policy or bond.<sup>452</sup> Insurers writing liability policies must offer uninsured motorist coverage, but any insured named in the policy may reject the coverage.<sup>453</sup> Likewise, any liability policy covering a private passenger vehicle must include the first party benefits described in the statute; but *any or all* of the first party coverages may be rejected in writing by the named insured.<sup>454</sup> Arkansas, accordingly, is only nominally a no fault state.

*Covered Vehicles and Uses* — The statute refers to private passenger motor vehicles. A provision of the motor vehicle law, however, defines motor vehicle as every device by which persons or property may be transported upon a highway, and excludes devices moved by human power or used upon rails or tracks.<sup>455</sup>

Covered uses are not specified in terms of maintenance or operation; rather, the statute simply refers to injury in a motor vehicle accident, and occupying or being struck by an insured motor vehicle.<sup>456</sup>

*Covered Persons* — Individuals entitled to first party benefits are: (a) the named insured; (b) household relatives; (c) occupants of the insured vehicle; and (d) pedestrians, bicyclists, motorcyclists, persons in a horse-drawn wagon or riding an animal if struck by the insured vehicle. As to classifications (c) and (d) the insured vehicle's coverage is not applicable if the occupant or person struck is an insured under another collectible automo-

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452. ARK. STAT. ANN. § 75-1427(a) (1979 & Supp. 1983).

453. *Id.* § 66-4003 (Supp. 1983).

454. *Id.* § 66-4014, -4015 (1980 & Supp. 1983). The first party provisions became effective July 1, 1974. 1973 Ark. Acts 467.

455. *Id.* § 75-102(a) (1979).

456. *Id.* § 66-4014 (1980 & Supp. 1983).

bile policy.<sup>457</sup>

Excluded persons are those causing intentional injury to themselves and individuals committing a felony or eluding lawful arrest.<sup>458</sup>

*Benefits, Generally* — Each category of benefits carries its own dollar limit for the statutory minimum. An insurer may offer broader benefits.<sup>459</sup>

Benefit payments are overdue if not tendered within thirty days of proof of loss. A person may bring a contract action for overdue benefits; a successful claimant, in addition to the benefits due, is entitled to attorney's fees, a twelve percent penalty and interest.<sup>460</sup>

*Medical Benefits* — The statutory limit for medical and hospital benefits is \$5000 per person and covers reasonable and necessary expenses for medical, hospital, nursing, dental, ambulance, prosthetic services and religious healing within two years of the accident.<sup>461</sup>

*Income Loss Benefits* — The maximum payable is \$140 a week for fifty-two weeks. However, only seventy percent of the loss of income from work is included in these figures. If the accident victim does not earn income, the benefits are limited to \$70 a week for fifty-two weeks for services substituting for those the injured person would have performed. Income benefits are subject to an eight day waiting period.<sup>462</sup>

*Death Benefits* — The Arkansas statute makes no provision for survivor benefits as such. Instead it specifies a \$5000 payment to the personal representative of a deceased accident victim if the death is caused within one year of the date of the accident.<sup>463</sup>

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457. *Id.* § 66-4016 (1980).

458. *Id.* § 66-4017.

459. *Id.* § 66-4020.

460. *Id.* § 66-4021.

461. *Id.* § 66-4014(a) (1980 & Supp. 1983).

462. *Id.* § 66-4014(b).

463. *Id.* § 66-4014(c).

*Tort Liability* — No immunity from tort liability is incorporated in the Arkansas plan.<sup>464</sup>

*Subrogation; Offsets* — The wording of the statute appears to require, before subrogation rights attach, that an individual has received medical and income loss benefits. If such a person then recovers in tort by settlement or judgment, the insurer paying first party benefits has a lien upon and a right of reimbursement from the tort recovery or settlement.<sup>465</sup> There is no provision limiting reimbursement to equate with strictly economic loss recovery (special damages).

Offsets for collateral source payments are not treated in the statute. However, the standard authorized policy permits a setoff of Workers' Compensation and other disability benefits.

#### DELAWARE

*Required Insurance* — Delaware is a compulsory insurance state; to be registered, a motor vehicle must be covered by liability and no fault insurance.<sup>466</sup> In addition, liability policies delivered in the state must include uninsured motorist coverage.<sup>467</sup> The Motorists' Protection Act mandating no fault insurance became effective on January 1, 1972.<sup>468</sup> Unlike most state plans, the Delaware no fault system incorporates a *property damage* provision. However, since the Act omits limitation of the right to sue in tort, it represents an "add-on" scheme which simply enlarges first party benefits.

*Covered Vehicles* — The Act does not define covered vehicles. However other sections of the Delaware Code require every "motor vehicle, semi-trailer and pole-trailer" to be registered,<sup>469</sup> and specify that a motor vehicle means self-propelled vehicles,

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464. *Id.* § 66-4018.

465. *Id.* § 66-4019.

466. DEL. CODE ANN. tit. 21, § 2118(k) (1979). Liability limits effective Jan. 19, 1984 are \$15,000/\$30,000/\$10,000. *Id.* § 2944.

467. *Id.* tit. 18, § 3902 (1974 & Supp. 1980).

468. 58 Del. Laws 98 (1971) (codified at DEL. CODE ANN. tit. 18, § 3902(a)-(b) (1974 & Supp. 1980); *id.* tit. 21, § 2118 (1979 & Supp. 1980)).

469. DEL. CODE ANN. tit. 21, § 321 (1979).

excepting farm tractors and off-highway vehicles.<sup>470</sup>

The property damage provision excludes damage to a motor vehicle, aircraft, watercraft and self-propelled mobile equipment.<sup>471</sup>

*Covered Uses* — The statute does not define uses except to tie the liability coverage requirement to injury or damages “arising out of ownership, maintenance or use” of a vehicle.<sup>472</sup>

*Covered Persons* — No fault coverage is applicable to:

- (a) persons occupying an insured vehicle;
- (b) others injured in a motor vehicle accident if not occupying another motor vehicle;
- (c) named insureds and members of their households while pedestrians and struck by a vehicle not insured in Delaware, or while occupying a registered vehicle (other than a Delaware insured vehicle) in the United States or Canada;
- (d) other pedestrians injured by the insured vehicle within the state.<sup>473</sup>

Motorcycle owners may elect to exclude coverage of persons riding the motorcycle not on a highway and when there is no collision or contact with another vehicle.<sup>474</sup>

*Benefits, Generally* — The minimum limit for medical, lost earnings and substitute services expenses is \$15,000 for any one person and \$30,000 for all persons in one accident.<sup>475</sup> The property damage limit for one accident is \$10,000.<sup>476</sup> Coverage for benefits is limited to a period of two years from the date of the accident.<sup>477</sup>

Policies may be issued for coverage above the minimum limits.<sup>478</sup> The prescribed limits may be made subject to deductibles,

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470. *Id.* § 101(20) (1979 & Supp. 1980).

471. *Id.* § 2118(a)(3).

472. *Id.* § 2118(a)(1).

473. *Id.* § 2118(a)(2)(c)-(e).

474. *Id.* § 2118(a)(2).

475. *Id.* § 2118(a)(2)(b).

476. *Id.* § 2118(a)(3).

477. *Id.* § 2118(a)(2)(h).

478. *Id.* § 2118(c) (1979).

waiting periods and reductions applicable to the owner of the vehicle or members of his household.<sup>479</sup>

Expenses of claimants must be submitted to insurers "as promptly as practical," and paid "as soon as practical" after they are received within two years of the date of the accident.<sup>480</sup>

It should be noted that the Delaware law precludes any person eligible for no fault personal injury or property damage benefits from pleading such damages in an action against a tortfeasor.<sup>481</sup>

*Medical Benefits* — Medical benefits include medical, hospital, dental, x-ray, ambulance, prosthetic, nursing, funeral services (the latter limited to \$2000 for one person), and religious healing.<sup>482</sup>

*Lost Earnings* — Within the aggregate \$15,000 limit, the net amount of lost earnings is covered for employed and self-employed persons. For both medical-surgical expenses and lost earnings, the statute incorporates an extension of payments if treatment cannot be performed within the two year limitation period.

*Property Damage* — The Act's required \$10,000 property damage protection excludes motor vehicles, as noted in *Covered Vehicles* above. An optional provision covering damage to the insured motor vehicle, including loss of its use, may be elected or excluded by an owner. The limit for damages is the cash value of the car; for loss of use, the maximum is \$300.<sup>483</sup>

*Subrogation* — Insurers providing first party payments are subrogated to the rights of recipients of benefits, including Workers' Compensation benefits. But subrogation is limited to the maximum amount of a tortfeasor's liability insurance after the injured party's claim has been settled. An insured is entitled to be indemnified by a Worker's Compensation insurer obligated

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479. *Id.* § 2118(a)(2)f (1979 & Supp. 1980).

480. *Id.* § 2118(a)(2)(i).

481. *Id.* § 2118(g) (1979).

482. *Id.* § 2118(a)(2) (1979 & Supp. 1980).

483. *Id.* § 2118(a)(4).

to make payment to the injured party.<sup>484</sup>

*Arbitration* — Upon request of a claimant, an insurer must submit to arbitration claims for no fault benefits and motor vehicle damages. The request must be in writing, addressed to the insurance commissioner within ninety days of an offer of settlement or denial of coverage. Arbitration is administered by the insurance commissioner pursuant to rules and a schedule of costs promulgated by the commissioner. The losing party has the right to appeal to the superior court for de novo consideration.<sup>485</sup>

## MARYLAND

*Required Insurance* — The owner of a vehicle required to be registered in Maryland must maintain security throughout the registration period in the form of a liability insurance policy with limits of \$20,000/\$40,000/\$10,000.<sup>486</sup> Uninsured motorist coverage at least equal to the mandated liability limits must be incorporated in every policy of motor vehicle liability insurance.<sup>487</sup> In 1972, the Maryland legislature supplemented its existing tort compensation scheme by adding subtitle 35, "Motor Vehicle Casualty Insurance — Required Primary Coverage," to its insurance code; these no fault provisions became effective January 1, 1973.<sup>488</sup>

*Covered Vehicles and Uses* — Motor vehicle includes automobiles, trailers and other vehicles operated upon public roads by other than animal or muscular power. Taxicabs and buses are excluded, as are vehicles not subject to registration requirements.<sup>489</sup> Motorcycles may be excluded from economic loss

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484. *Id.* § 2118(f) (1979). Disputes among insurers involving liability or no fault payments must be arbitrated by the Wilmington Auto Accident Reparation Arbitration Committee. *Id.*

485. *Id.* § 2118(i).

486. MD. TRANSP. CODE ANN. § 17-103, -104 (1977 & Supp. 1983).

487. MD. ANN. CODE art. 48A, § 541(c) (1979 & Supp. 1983).

488. 1972 Md. Laws 73 (codified at MD. ANN. CODE art. 48A §§ 539-547A (1979 & Supp. 1983)).

489. MD. ANN. CODE art. 48A, §§ 538(b), 541(e) (1979 & Supp. 1983). Government owned and operated vehicles are excluded. *Id.*

coverage, or coverage may be offered with deductibles or specific exclusions.<sup>490</sup>

Use refers to occupying, being in, on or alighting from a motor vehicle.<sup>491</sup>

*Covered Persons* — The class of covered persons encompasses the named insured, family members residing in the insured's household, occupants of the insured vehicle and pedestrians injured in an accident involving the insured vehicle. The named insured and family members are also covered for accidents involving an uninsured vehicle, but not if the uninsured vehicle is owned by them.<sup>492</sup> Specifically excluded are persons intentionally causing the accident, or using a vehicle known to be stolen, or injured while committing a felony. Nonresident pedestrians are not covered for accidents outside Maryland.<sup>493</sup>

*Benefits, Generally* — The aggregate of mandated first party benefits is \$2500 for reasonable expenses incurred within three years of the accident.<sup>494</sup> Benefits are payable within thirty days of satisfactory proof of loss; overdue benefits bear simple interest at the rate of one and one-half percent per month. No fault policies may require that claims must be presented to the insurer within twelve months after the date of the accident.<sup>495</sup>

The Maryland statute does *not* make provision for survivors or for income loss benefits for unemployed accident victims.

Benefits are payable by the insurer of a secured vehicle. An insured person injured by an uninsured vehicle receives benefits from his own insurer.<sup>496</sup>

*Medical Benefits* — Reimbursable expenses include the reasonable cost of medical, surgical, dental, x-ray, hospital, nursing, ambulance, prosthetic and funeral services.<sup>497</sup> No dollar sub-

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490. *Id.* § 545(B) (Supp. 1983).

491. *Id.* § 543(b) (1979).

492. *Id.* §§ 539(a), 545(c) (1979 & Supp. 1983).

493. *Id.* § 545(A) (Supp. 1983).

494. *Id.* § 539(a) (1979 & Supp. 1983).

495. *Id.* § 544(a), (c) (1979).

496. *Id.* § 543(b), (c).

497. *Id.* § 539(a) (1979 & Supp. 1983).

limit governs these benefits.

*Income Loss Benefits* — Income is defined in the Act to include wages, tips, salary, commissions, professional fees, earnings from businesses and farms and the reasonable value of property or services received in lieu of payment of earnings.<sup>498</sup> An "income producer" — a person in an occupational status at the time of the accident — is entitled to benefit for loss of income. Injured persons not qualifying as income producers are entitled only to reimbursement of necessary expenses for essential services they would have performed for their households.<sup>499</sup>

*Offsets; Coordination of Benefits* — The statute states that no fault benefits are to be paid "without regard to any collateral source of medical, hospital and wage continuation benefits."<sup>500</sup> But it also specifically provides that benefits received from state or federal Workers' Compensation laws must be offset against first party benefits.<sup>501</sup> No person may recover benefits from more than one policy or insurer either on a duplicative or supplemental basis.<sup>502</sup>

Maryland encourages coordination of benefits by permitting insurers to interrelate policy coverages and avoid duplication, with appropriate reductions in premiums.<sup>503</sup> Nonprofit health services plans may provide medical, hospital and disability benefits for motor vehicle accidents.<sup>504</sup>

*Subrogation* — An insurer paying the mandated first party benefits does not have a right of subrogation against any person or insurer.<sup>505</sup>

*Tort Actions and Exemption* — The Maryland statute preserves an injured person's right of action in tort for any

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498. *Id.* § 538(d) (1979).

499. *Id.* § 539(a) (1979 & Supp. 1983).

500. *Id.* § 540 (1979).

501. *Id.* § 543(d).

502. *Id.* § 543(a).

503. *Id.* § 540.

504. *Id.* § 543(e).

505. *Id.* § 540.

losses sustained as a result of a motor vehicle accident.<sup>506</sup> There is no exemption insulating a properly insured vehicle owner from claims for economic or noneconomic damages.

*Conclusions* — Maryland's scheme represents a quasi no fault system in which no fault reparations of a modest sum, \$2500, are made available to accident victims without proof of fault. Liability and first party coverages are mandated for owners of covered vehicles. However, traditional tort law is not compromised and a tortfeasor acquires no protection from lawsuits by complying with the statute's insurance requirements.

## OREGON

*Required Insurance* — Oregon is a compulsory insurance state. A motor vehicle may not be registered without evidence of satisfying the state's security requirements by an insurance policy, certificate of self-insurance, surety bond or security deposit.<sup>507</sup> The required liability limits are \$25,000/\$50,000/\$10,000.<sup>508</sup> Every motor vehicle policy must provide uninsured motorist coverage with options exceeding the required liability coverage, up to the limits provided by the policy for bodily injury.<sup>509</sup>

The no fault statute, as enacted in 1972 and subsequently amended, adds the requirement that every liability policy must include first party benefits for the consequences of personal injury resulting from a motor vehicle accident.<sup>510</sup>

*Covered Vehicles* — Oregon's statute is addressed to private passenger motor vehicles. It defines motor vehicle as a self-propelled motor vehicle or trailer. Private passenger vehicle means a four wheel car or station wagon, pickup or panel truck-type, not used as a public conveyance or for wholesale or retail delivery. The law specifically excludes farm tractors, mopeds and motorcycles and vehicles designed for use off public roads,

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506. *Id.* § 542.

507. OR. REV. STAT. § 486.411 (1981).

508. *Id.* § 486.011(7). These limits became effective January 1, 1984.

509. *Id.* § 743.789 (1981).

510. Act of Jan. 1, 1972, ch. 523, 1971 Or. Laws 916 (codified at OR. REV. STAT. § 743.800-.835 (1981)).

or operated on rails or located on premises for use as a residence.<sup>511</sup>

*Covered Uses* — Use includes occupying (in, upon, entering into or alighting from a motor vehicle) or being struck by the insured vehicle. Excluded are use of the vehicle as a livery conveyance or in wholesale or retail business (except as associated with farming) and organized racing or speed contests.<sup>512</sup>

*Covered Persons* — Persons entitled to no fault benefits are the insured, members of his family residing in the same household, guest passengers and pedestrians struck by the insured vehicle.<sup>513</sup> The insured and family members are covered if injured as pedestrians in an accident outside Oregon, but the insurer may exclude other pedestrians from coverage in out-of-state accidents. Other exclusions apply to persons intentionally causing injury or participating in a prearranged speed contest.<sup>514</sup>

*Benefits, Generally* — The Oregon plan prescribes no maximum for the aggregate of payments but rather designates sublimits for each major category of reimbursement.<sup>515</sup> The insurer may offer more favorable benefits than those contained in the statute and, for the insured and his family members, may write coverage with deductibles up to \$250.<sup>516</sup>

Benefits must “be paid promptly” after proof of loss. The possibility that the claimant may pursue a tort action does not relieve the insurer of the obligation to pay PIP benefits.<sup>517</sup>

*Medical Benefits* — Medical benefits totalling \$5000 per person are described to include “medical, hospital, dental, surgical, ambulance and prosthetic services.” The time limitation for reimbursement of medical expenses is one year from the date of

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511. OR. REV. STAT. § 743.800(7)(a)-(f) (1981).

512. *Id.* § 743.800(7)(c), (f).

513. *Id.* § 743.800.

514. *Id.* § 743.815(1)-(2).

515. *Id.* § 743.800.

516. *Id.* § 743.805(1)(a), .820.

517. *Id.* § 743.805(2), (3).

the accident.<sup>518</sup>

*Income Loss Benefits* — The statute refers to loss of income of an income earner during a “period of disability” and defines such period as embracing at least fourteen days of inability to pursue a remunerative occupation, ending on the date the injured party is capable of resuming his usual work. During that time, first party benefits cover seventy percent of loss of income but need not exceed \$750 a month for a period of a year.<sup>519</sup>

*Substitute Services* — If the injured person is not “usually engaged in a remunerative occupation” the only reimbursable expenses are those incurred to provide essential services the person would have performed, but for his injury, during the period of disability. The reimbursement required is \$18 a day for a period of a year.<sup>520</sup>

*Other Benefits* — Reasonable and necessary funeral expenses are limited to \$1000 within one year of the accident.<sup>521</sup> There is no provision for survivor benefits.

*Offsets; Primary and Excess Coverage* — Workers’ Compensation, medical and disability benefits to which the insured is entitled under any state or federal law may be offset against PIP payments.<sup>522</sup>

The vehicle owner’s insurance is primary for the insured, his family and passengers occupying the insured vehicle and for the insured and family members injured as pedestrians. The insured’s coverage is excess when he or his family are injured in a vehicle not insured under the policy and when persons, injured as pedestrians by the insured vehicle, are entitled to payments from collateral sources such as other insurance, governmental benefits or gratuitous benefits.<sup>523</sup>

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518. *Id.* § 743.805(1)(a).

519. *Id.* § 743.800(3), .805(1)(b).

520. *Id.* § 743.800(4), .805(1)(c).

521. *Id.* § 743.800(2).

522. *Id.* § 743.810(2).

523. *Id.* § 743.810(1).

*Tort Liability; Reimbursement; Subrogation* — Nothing in the Oregon statute inhibits pursuit of a traditional tort claim by an accident victim. In addition, the insurer which has paid first party benefits is entitled to reimbursement from the insurer of a party at fault in causing the accident. In fact, the statute creates a secondary tier of adjustment opportunities for insurers. Reimbursement must be calculated on the basis of the comparative negligence of the insured parties. Any disputes between insurers must be resolved by arbitration. But findings and awards in arbitration procedures are inadmissible in subsequent legal or equitable actions.<sup>524</sup>

An accident victim who institutes a tort claim must give notice to the insurer paying PIP benefits and the insurer may elect reimbursement out of any recovery attained. Once the insurer has given written notice of its election, it acquires a lien for benefits it has furnished.<sup>525</sup>

If the insurer has not perfected its lien and is not entitled to inter-insurer reimbursement, it is subrogated to the injured party's right of recovery to the extent of benefits furnished.<sup>526</sup>

This entire network of reimbursement for insurers emphasizes the vitality of the fault principle persistently undergirding Oregon's system of reparations. It evidences the compromise struck by the legislature of this and other Group II states between a commitment to traditional tort law precepts and a concern to facilitate prompt payment of out-of-pocket economic losses resulting from injuries sustained in a motor vehicle accident.

## SOUTH CAROLINA

*Required Insurance* — South Carolina requires that registrants of vehicles maintain liability insurance for bodily injury or death and property damage with limits of at least \$15,000/\$30,000/\$5000.<sup>527</sup> No motor vehicle policy may be issued without uninsured motorist coverage with the same minimum or higher

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524. *Id.* § 743.825.

525. *Id.* § 743.828.

526. *Id.* § 743.830.

527. S.C. CODE ANN. § 56-9-820 (Law. Co-op. 1976).

limits conforming to the insured's liability coverage.<sup>528</sup> Pursuant to the South Carolina Automobile Reparation Reform Act of 1974, registrants are obligated to maintain security for the no fault benefits provided by that statute.<sup>529</sup>

*Covered Vehicles and Uses* — Reference to the state's motor vehicle law instructs that vehicles required to be registered, and hence encompassed by the Reparation Reform Act, are self-propelled and those electrically operated from overhead wires but not on rails.<sup>530</sup>

Covered uses are not specified in the Act, which simply refers to injuries in a motor vehicle accident, and occupying, using or, as a pedestrian, being struck by an insured vehicle.<sup>531</sup>

*Covered Persons* — First party benefits apply to the named insured and members of his family residing in his household when injured in any motor vehicle accident. Other persons are covered while occupying or using the insured vehicle or as pedestrians struck by the insured vehicle.<sup>532</sup>

The following may be excluded from benefits: persons causing an accident intentionally, or using a vehicle known to be stolen, or committing a felony. As to users of motorcycles, coverage may exclude economic loss benefits, or be offered with deductibles and options.<sup>533</sup>

*Benefits, Generally* — No fault benefits fall into two groups: (a) medical expenses and (b) a combination of work loss and essential services benefits, which may be elected or declined. The insured may contract both for (a) and (b), for either or for neither. The insurer must, however, offer this coverage. The ba-

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528. *Id.* § 56-9-831 (Law. Co-op. Supp. 1981).

529. Automobile Reparations Reform Act of October 1, 1974, Act No. 1177, 1974 S.C. Acts 2718 (codified as amended S.C. CODE ANN. § 56-11-10 to -800 (Law. Co-op. 1976 & Supp. 1981)). S.C. CODE ANN. § 56-11-190, -200 (Law. Co-op. 1976).

530. S.C. CODE ANN. § 56-3-20(2) (Law. Co-op. 1976).

531. *Id.* § 56-11-110 (Law. Co-op. Supp. 1981).

532. *Id.* Despite the broad language that the named insured and relatives are covered for injuries "in any motor vehicle accident," the standard no fault indorsement contains the usual exclusion of the named insured and relatives if injured while occupying an uninsured vehicle owned by the named insured.

533. *Id.* § 56-11-170 (Law. Co-op. 1976).

sic limit for all no fault benefits is \$1000 for reasonable expenses within three years of the accident.<sup>534</sup> However, the insurer must offer alternative benefit levels of \$1500, \$2000, \$2500 and \$5000.<sup>535</sup> Insurers must also offer collision and comprehensive coverages.<sup>536</sup>

Benefits are payable within thirty days of satisfactory proof. Insurers may prescribe that notice of loss must be tendered within six months of the date of the accident.<sup>537</sup>

Basic economic loss benefits are *not* subject to subrogation or assignment.<sup>538</sup>

*Medical Benefits* — This coverage is captioned “minimum medical, hospital and disability benefits.” If elected by the insured, the coverage applies to necessary medical, surgical, dental, hospital, nursing, ambulance, x-ray, chiropractic, prosthetic and funeral services and treatment in accordance with a recognized religious or licensed method of healing.<sup>539</sup>

*Income Loss and Other Benefits* — If the insured accident victim is an income producer at the time of the accident, he may receive payments for loss of income. If not an income producer at the time of the accident, the insured is entitled to reimbursement for essential services he would have performed but for his injury.<sup>540</sup>

No provision is made for survivor benefits.

*Offsets; Reimbursement* — State and federal Workers’ Compensation benefits are set off against first party coverage. Benefits received pursuant to no fault provisions are to be deducted from any tort recovery or settlement.<sup>541</sup>

Although the insurer has no right of subrogation with respect to basic economic loss benefits, the company is entitled to

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534. *Id.* § 56-11-110 (Law. Co-op. Supp. 1981).

535. *Id.* § 56-11-120 (Law. Co-op. 1976).

536. *Id.* § 56-11-140 (Law. Co-op. 1976 & Supp. 1981).

537. *Id.* § 56-11-160 (Law. Co-op. 1976).

538. *Id.* § 56-11-110 (Supp. 1981).

539. *Id.* § 56-11-110, -140.

540. *Id.* § 56-11-110.

541. *Id.* § 56-11-150(d) to (f) (Law. Co-op. 1976).

reimbursement, if it has paid such benefits, from any settlement or judgment secured by the insured.<sup>542</sup>

*Coordination of Benefits* — Nonprofit health service plans and any authorized insurer may provide medical and disability benefits for injuries arising from a motor vehicle accident.<sup>543</sup>

The statute forbids duplication of no fault benefits.<sup>544</sup> Consequently no stacking of insurance is permitted.

*Tort Liability* — Nothing in South Carolina's Automobile Reparations Reform Act of 1974 affects traditional tort rights of a person to sue for damages as compensation for injuries sustained in a motor vehicle accident. The only proviso requires that any no fault benefits received must be deducted from a tort recovery, settlement or judgment.<sup>545</sup>

#### SOUTH DAKOTA

*Insurance Requirements* — South Dakota is not a compulsory insurance state. It requires proof of financial responsibility after failure of a motorist to pay a judgment and also upon revocation of a license following conviction for traffic violations. Liability protection in the amounts of \$15,000/\$30,000/\$10,000 supplied by insurance, bond or deposit of money or securities qualifies as proof of financial responsibility.<sup>546</sup> Every liability policy issued in the state must include uninsured motorist coverage.<sup>547</sup> There is no requirement that a vehicle owner purchase no fault insurance; rather, South Dakota law directs automobile liability insurers to offer "Supplemental Coverage," a first party benefits option.<sup>548</sup>

*Covered Vehicles* — The Supplemental Coverage portion of the insurance law defines "automobile" as a four wheel passenger motor vehicle owned by a natural person and used upon

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542. *Id.* § 56-11-130 (Law. Co-op. 1976 & Supp. 1981).

543. *Id.* § 56-11-150(e) (Law. Co-op. 1976).

544. *Id.* § 56-11-150(a).

545. *Id.* § 56-11-150(f).

546. S.D. CODIFIED LAWS ANN. § 32-35-2, -64 (1976 & Supp. 1980).

547. *Id.* § 58-11-9 (1978 & Supp. 1983).

548. *Id.* § 58-23-7 (1978).

public roads. The term includes trailers and excludes motorcycles.<sup>549</sup>

*Covered Persons* — Persons entitled to benefits are the “named insured” and the “insured.” The “named insured” means the individual(s) designated by name as specifically insured. The “insured” refers to members of the household of the named insured, pedestrians struck by the insured vehicle and persons using the insured vehicle with the consent of the named insured.<sup>550</sup> It is important to observe the distinction between named insured and insured when referring to the benefits section of the statute.

*Covered Uses* — The statute applies to bodily injury arising out of the use of an automobile. Use encompasses operating, occupying, entering or leaving an automobile.<sup>551</sup>

*Medical Benefits* — The optional Supplementary Coverage provides medical benefits to the named insured and others insured. The statute supplies no itemization of the kinds of services that qualify as medical expenses. Reimbursement up to \$2000 for each injured person is available if this option is chosen. Expenses must be incurred within two years of the date of the accident.<sup>552</sup>

*Income Loss Benefits* — Only the named insured is designated as a person eligible for income reimbursement. The limit is \$60 a week for disability extending for a period of more than fourteen days following the accident. The benefit is payable for fifty-two consecutive weeks. If the named insured is not employed at the time of the accident, the income loss may be reduced by fifty percent.

No subtraction from disability benefits is authorized on the ground that the injured party receives workers’s compensation

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549. *Id.* § 58-23-6(1). Elsewhere in the state’s insurance law, motor vehicle is defined as a private passenger or station wagon type not used as a public or livery conveyance or in the profession or business of the insured. *Id.* § 58-11-45(1)(a) to (b).

550. *Id.* § 58-23-6(2) to (3).

551. *Id.* § 58-23-6(3), -8.

552. *Id.* § 58-23-8(3).

or payments from any other source. Thus, the statute does not incorporate any modifications of the collateral source rule.<sup>553</sup>

*Death Benefit* — Supplemental Coverage provides for a death benefit but it is applicable only to the named insured. If loss of life results directly from the accident injury — including the event of the named insured, as a pedestrian, being struck by a motor vehicle — a death benefit of \$10,000 is payable. Death must occur within ninety days of the accident.<sup>554</sup>

The above medical, income loss and death benefits constitute the entire package of protection contemplated under South Dakota's Supplementary Coverage. No tort immunity or limitation on claims for noneconomic loss appear in the relevant statute. Accordingly, Supplementary Coverage represents merely an extension of the Medical Payments provision of standard automobile liability insurance policies. Furthermore, since the vehicle owner has the right to reject any one or all of the supplements, the insured may elect to forego no fault protection.

## TEXAS

*Insurance Requirements* — Until January 1, 1982,<sup>555</sup> Texas law did not require a vehicle owner to carry liability insurance; but every automobile liability policy that was issued in the state had to incorporate the personal injury protection coverage enacted in 1973 by the Texas legislature.<sup>556</sup> Financial responsibility was in the form of security requirements after an accident.<sup>557</sup> The amended Motor Vehicle Safety Responsibility Act now requires that a vehicle operated in Texas must be covered by automobile liability insurance.<sup>558</sup> That policy must include no fault protection unless the insured rejects such coverage in writing.<sup>559</sup>

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553. *Id.* §58-23-8(2).

554. *Id.* §58-23-8(1).

555. Safety Responsibility Law, TEX. REV. CIV. STAT. ANN. art. 6701h §§ 1A-1G (Vernon Supp. 1982-1983).

556. Personal Injury Protection Coverage, TEX. INS. CODE ANN. art. 5.06-3 (Vernon 1981).

557. TEX. REV. CIV. STAT. ANN. art. 6701h § 5(a) (Vernon 1977).

558. *Id.* § 1A(a) (Vernon Supp. 1982-1983). After January 1, 1982, liability insurance became compulsory. No motor vehicle may be operated in Texas unless covered by an automobile liability insurance policy with limits of \$15,000/\$30,000/\$15,000, eff. Jan. 1, 1984, to be raised to \$20,000/\$40,000/\$15,000, eff. Jan. 1, 1986.

559. TEX. INS. CODE ANN. art. 5.06-3(a) to (c) (Vernon 1981).

*Covered Vehicles* — The no fault law applies to self-propelled vehicles, trailers, and electrically powered vehicles not operated on rails. Excepted are road construction vehicles, well drillers, implements of husbandry,<sup>560</sup> vehicles owned by the United States, Texas or a political subdivision of Texas, vehicles for which security is deposited with the Texas Department of Public Safety, self-insured vehicles and those registered to and operated by nonresidents.<sup>561</sup>

*Covered Uses* — The Texas statute does not describe uses other than noting that the required liability policy which incorporates PIP coverage applies to events "arising out of the ownership, maintenance or use" of a motor vehicle.<sup>562</sup>

*Covered Persons* — Covered persons are the named insured, members of the insured's household, and authorized operators and passengers of the named insured's vehicle.<sup>563</sup>

An insured is excluded from benefits if he intentionally causes injury to himself or sustains injury while committing a felony or eluding lawful apprehension.<sup>564</sup>

*Benefits, Generally* — The maximum of first party benefits for personal injury prescribed by the statute is \$2500 for each individual.<sup>565</sup> Optional additional coverage for bodily injury or death is permitted up to a maximum of \$10,000 for one person in any one accident and \$20,000 for two or more persons in any one accident.<sup>566</sup>

A covered person may be required to submit original proof of loss within a period not less than six months after the accident.<sup>567</sup> Benefits are to be paid periodically within thirty days of satisfactory proof.<sup>568</sup> If an insurer fails to pay benefits when due, the entitled claimant may bring a contract action against the in-

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560. TEX. REV. CIV. STAT. ANN. art. 6701h § 1(3) (Vernon 1977).

561. *Id.* art. 6701h § 1A(b) (Vernon Supp. 1982-1983).

562. TEX. INS. CODE ANN. art. 5.06-3(3) (Vernon 1981).

563. *Id.* art. 5.06-3(b).

564. *Id.* art. 5.06-3(e).

565. *Id.* art. 5.06-3(b).

566. TEX. REV. CIV. STAT. ANN. art. 6701h § 21(b)(2) (Vernon 1977).

567. TEX. INS. CODE ANN. art. 5.06-3(d)(1) (Vernon 1981).

568. *Id.* art. 5.06-3(d).

suror; if successful, the claimant may recover attorney's fees, a twelve percent penalty, and interest from the date the benefits became overdue.<sup>569</sup>

*Medical Benefits* — Within the overall \$2500 limit, a covered person may receive payment of *reasonable* expenses for *necessary* medical, surgical, x-ray, dental, ambulance, hospital and professional nursing services, for prosthetic devices and for funeral services. The expenses must arise from and be incurred within three years of the accident.<sup>570</sup>

*Loss of Income* — Within the overall \$2500 limit, an "income producer" is entitled to payment for income lost as a result of the accident. If the covered person is not an income or wage producer at the time of the accident, he is entitled to reimbursement for necessary and reasonable expenses incurred for essential services which the accident victim would have performed for his or her household.<sup>571</sup>

Benefits for loss of income, as more precisely defined in the Texas Standard Automobile Endorsement (Personal Injury Protection Endorsement), means eighty percent of *actual income lost*; the latter term denotes the difference between the monthly rate of income earned at the time of the accident and income received during the period of disability. Income includes wages, salaries, fees and commissions. As in the case of medical expenses, the loss of income must have occurred within three years of the accident.

The Texas Act contains no death benefit or survivor loss provision.

*Collateral Sources; Subrogation; Setoffs* — The first party benefits required by the statute are payable "without regard to any collateral source of medical, hospital, or wage continuation benefits."<sup>572</sup> The Texas no fault system is thus an "enrichment" plan; an accident victim who possesses other insurance protec-

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569. *Id.* art. 5.06-3(d)(3).

570. *Id.* art. 5.06-3(b).

571. *Id.*

572. *Id.* art. 5.06-3(c).

tion for medical expenses and income loss may duplicate his recovery. Since the statutory limit of \$2500 is so modest, multiple payment for the same loss may not, in any event, produce an unseemly windfall for the insured.

An insurer has no right of subrogation to recoup statutory benefits paid. Neither does an insurer possess a claim for indemnification against any other person or insurer, even if fault for the accident can be attributed to such other party.<sup>573</sup> These statutory provisions reflect a pure no fault approach. By disallowing a second level of loss distribution through re-introduction of proof of negligence, the Texas prohibition of subrogation and recovery overproduces a straightforward system of no fault compensation, economically and ideologically.

The statute contains one setoff provision relating to guest passengers who bring liability claims against the owner, operator or insurer of the host car.<sup>574</sup>

*Tort Liability* — The Texas no fault Act makes no change in tort liability law. PIP coverage has been superimposed on basic automobile liability insurance as a "top layer" of quick compensation for special damages. No tort immunity or exemption protects the insured; no verbal or monetary threshold impedes the injured from seeking recovery for noneconomic or economic detriment in a traditional tort action.

## VIRGINIA

*Required Insurance* — Every registrant of a motor vehicle in Virginia must furnish a certificate that his vehicle is insured for bodily injury and property damage liability insurance with limits of \$25,000/\$50,000/\$10,000.<sup>575</sup> Policies must include uninsured motorist coverage equal to limits of the liability insurance carried.<sup>576</sup> In 1972, the legislature added a requirement that insurers offer optional no fault coverages for economic loss.<sup>577</sup>

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573. *Id.*

574. *Id.* art. 5.06-3(h).

575. VA. CODE § 46.1-504(c) (1980); *id.* § 46.1-167.1 (1980 & Supp. 1983).

576. *Id.* § 38.1-381(b).

577. 1972 Va. Acts 859 (codified at VA. CODE § 38.1-380.1 to -380.2 (1980 & Supp. 1983) (effective July 1, 1973)).

*Covered Vehicles and Uses* — Reference to Virginia's Motor Vehicles Code supplies a brief definition of motor vehicle as a vehicle capable of self-propulsion and required to be titled and licensed.<sup>578</sup>

The optional coverage amendment of 1972 relates to injuries arising from the ownership, maintenance or use of a motor vehicle and occupying or being struck by a motor vehicle.<sup>579</sup>

*Covered Persons* — The named insured, spouse and relatives residing in same household are covered while occupying or through being struck by a motor vehicle. Entitlement to benefits extends also to other persons occupying the insured motor vehicle.<sup>580</sup>

*Benefits, Generally* — Only if the insured requests optional first party coverage must the insurer offer it. If such a request is communicated, the required coverage has a limit of \$2000 per person for medical and loss of income benefits. The insured may purchase either medical or income benefits or both. Reimbursable expenses must be incurred within one year of the date of the accident.<sup>581</sup>

*Medical Benefits* — This category includes reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, rehabilitation, prosthetic, chiropractic services and funeral expenses.<sup>582</sup>

*Income Loss Benefits* — An accident victim who is usually engaged in a remunerative occupation may claim loss of income up to \$100 a week for a maximum period of fifty-two weeks.<sup>583</sup>

*Conclusions* — The Virginia optional coverage statute is simply an extended medical payment or "add-on" provision to the usual automobile liability policy. It becomes operative only

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578. VA. CODE § 46.1-167.2(a) (1980 & Supp. 1983).

579. *Id.* § 38.1-380.1.

580. *Id.* § 38.1-380.1(A).

581. *Id.* § 38.1-380.1(A)-(B).

582. *Id.* § 38.1-380.1(A)(a).

583. *Id.* § 38.1-380.1(A)(b).

upon the request of an insured. The minimal \$2000 limit fails to include survivor or replacement services benefits. The insured is free but not obligated to purchase additional medical expense coverage.

Stacking is expressly permitted for owners of up to four insured vehicles where health care or disability expenses exceed the limits of any one motor vehicle policy.<sup>584</sup>

## SUMMARY

The state statutes described in the foregoing sections emanate from a commonality of legislative purposes. These objectives include at a minimum providing access for the victim to a source of prompt reimbursement for personal injury expenses arising from a motor vehicle accident and reducing the volume of tort claims and the delays of recovery for out of pocket costs by eliminating proof of fault. The prescribed means to effectuate basic purposes, however, vary in detail. The cardinal differential is the limitation of tort liability in Group I systems and the retention of that liability in Group II systems. Since all of the statutes subscribe to some first party payments for basic economic loss, it is logical to treat the elements of that consensus first in summarizing reparations schemes.

All systems must identify what vehicles and uses and which persons are to be included in no fault coverage. Generally, private passenger vehicles — cars, sedans and pickup trucks — come within the ambit of covered vehicles. Most states include trailers and exclude motorcycles, mopeds and vehicles used for public conveyance. Farm and construction equipment also fall outside the type of vehicle which should carry PIP insurance. The thrust is to make the owner of a vehicle normally used to transport persons and property in daily activities responsible for purchasing coverage to protect occupants and pedestrians from the need to engage in litigation to recover basic medical and income losses.

Covered persons include the named insured, members of the family residing in the insured's household, occupants of, and pedestrians injured by the insured vehicle. The common exclu-

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584. *Id.* § 38.1-380.1(C).

sions refer to persons injured while (a) using an owned, uninsured vehicle, (b) acting intentionally to cause injury, (c) committing a felony or avoiding lawful apprehension, (d) engaging in a speed contest.

Covered uses generally encompass the use, operation and maintenance of a motor vehicle. Covered accidents are those "arising out of" use, operation or maintenance. Use includes occupying, entering or leaving a vehicle and loading or unloading if performed while occupying; excluded are the uses manifesting conduct of persons disqualified from coverage (speed contest, etc.) and repairing as part of a business of repairing motor vehicles, unless performed off business premises.

Benefits encompassed by no fault systems fit a common pattern of medical expenses, work loss, survivor or death benefits, substitute services costs and funeral or burial expenses. Some states prescribe an overall monetary aggregate embracing all no fault reimbursements mandated by statute. These general caps for Group I systems range from \$2000 in Massachusetts to \$50,000 in New York, and for Group II from \$1000 in South Carolina to \$5000 in Delaware. Other states assign a specific limit to each major category of loss. Clearly, the most crucial and pervasive economic needs following a personal injury accident relate to the costs of medical care and to the cessation of regular income if the person's disability prevents continued employment. Restoration of these deficits by medical and income loss benefits is the core of a no fault payments system.

Medical benefits cover medical, nursing and basic hospital services and also, in a number of states, non-medical treatment in accordance with the practices of a recognized religion. Medical coverage includes rehabilitation, usually occupational, psychiatric and physical therapy. Some states such as Pennsylvania and Colorado place specific emphasis on rehabilitation, with Pennsylvania requiring its commissioner of insurance to monitor rehabilitation services and results.

Michigan, Pennsylvania and New Jersey attach no special time or monetary limitation on medical benefits. Of the jurisdictions ascribing a separate limit, the District of Columbia in its recently enacted statute reflects the most generous approach, with a ceiling of \$100,000. At the other end of the scale are Georgia (\$1500) and Kansas (\$2000). Of course, where the total

mandated no fault coverage is merely \$2000, as it is in Massachusetts, medical expense recovery must compete with other elements of loss sought to be reimbursed from a minimal fund.

In compensation for loss of income, a marked diversity exists in statutory treatment. A few states require that the injured party be actually employed at the time of the accident; other states recognize eligibility, and take into account unemployment compensation of persons temporarily or seasonally unemployed. The divergence in legislative judgments of what the proper scope of a no fault system's income replacement should be is clearly illustrated in the range of benefits. Every accident victim cannot receive total reimbursement for work loss. Most states provide for a percentage of lost income with a modest weekly maximum (*e.g.* \$200), and a built-in discount if the benefits are not subject to income tax.

Work loss recovery may also be expressed by an aggregate figure (\$24,000 for the District of Columbia), or a monthly maximum with a time limitation attached. At the top of the scale is Michigan, which indexes the monthly maximum to the cost of living. From an original limit of \$1000 a month, Michigan has graduated the maximum to \$2252, payable for three years. New York, Maryland and Texas specify a three year limitation, while Kansas, Colorado and Arkansas prescribe a cut-off of one year.

Some Group I systems, for example Florida and New Jersey, permit the insured to exclude work loss benefits from no fault coverage. Group II states generally make income replacements optional either by direct election of basic coverage or by deductibles.

Substantial divergence attends the treatment of compensating dependent survivors for their deprivation of contributions the deceased accident victim would otherwise have supplied for their economic welfare. Some states provide only a flat death benefit, leaving intact a wrongful death action based on fault for recovery of damages to the next of kin. Some states provide a maximum survivor benefit. Other states, for example, Michigan, Minnesota and Kansas, transfer the income loss benefits of an accident victim to his or her surviving dependents. In the case of Michigan, the survivor benefits equal the most liberal, indexed level of payments paralleling annually adjusted work loss benefits.

*Substitute services*, that is, hired performance of household tasks the injured or deceased person would have contributed to his household but for the accident, are recognized by most systems as legitimate expenses to be compensated by first party payments. The prescribed reimbursement scale is typically modest, \$12 to \$20 a day for a period of a year. However, one of the most recent statutes, that of the District of Columbia, departs from the pattern and offers up to \$50 a day for replacement services. Perhaps if other states were to reconsider the monetary limit in the original no fault laws adopted a decade ago, they might also upgrade the value of substitute services to reflect inflationary trends.

Most state laws make provision for funeral, burial and cremation expenses ranging from \$1000 to \$2000.

The great divide separating Group I from Group II schemes is manifested in the treatment of tort liability for economic loss exceeding no fault benefits and for noneconomic loss. Group II statutes leave traditional tort actions unmodified. Group I systems, however, condition immunity from tort actions on surmounting certain monetary or verbal thresholds. Most states provide a choice; the injured party must either sustain medical expenses of a prescribed amount or experience a serious injury.

Serious injury is commonly defined as death, permanent disability, permanent and significant disfigurement, serious fractures, or loss of a body member or function. However, in some statutes, the definition introduces an additional criterion — disability preventing performance of customary activities for a prescribed period of time. Pennsylvania, North Dakota and Minnesota designate a minimum of sixty consecutive days of impairment, New York — ninety days, and the District of Columbia — one hundred and eighty days.

The monetary threshold ranges from \$200 (one of New Jersey's options) to \$5000 (District of Columbia). But a novel concept appears in three state systems, that of a "floating threshold." Hawaii, the District of Columbia and New Jersey in its second tort option provision require annual adjustment of the monetary threshold to reflect modifications of the Consumer Price Index. In view of spiraling medical care costs, the floating threshold reflects a state legislature's recognition of the realities of inflation.

In designing a no fault system, a state legislature concentrates on the first essential — compensation for basic economic loss. Even if the legislature proceeds no further, introduction of a no fault benefit scheme has a rippling effect reaching outer circles of issues which ought to be settled. Some of these secondary or tertiary problems relate to the collateral source rule, subrogation, arbitration, extraterritoriality and catastrophic injuries.

Most of the statutes countenance a partial abrogation of the collateral source rule by requiring that certain payments, which would otherwise duplicate basic no fault benefits, be offset. Most commonly, federal and state Workers' Compensation and disability benefits and, less commonly, Medicare, Medicaid and employer wage continuation payments are required to be subtracted from no fault benefits due the injured person. Only a very few states, for example, Colorado, Michigan and New York, explicitly encourage coordination of health or accident insurance and no fault coverage.

The right of subrogation is recognized in almost all of the state laws. An insurer obligated to pay PIP benefits has a right of reimbursement from the insurer of a party at fault. If two or more insurers are obligated to pay benefits for the same injury, each must pay its pro rata share unless the applicable law has specified an order or priority. Mandatory inter-company arbitration is the usual procedure prescribed to resolve disputes between or among insurers pertaining to the right of reimbursement or contribution. Where the disagreement is between the accident victim seeking benefits and his or her no fault insurer, the claimant in a few states may elect arbitration, but more frequently his recourse is a court action.

No fault statutes virtually ignore conflict of laws problems. Occasional provisions state that basic benefits follow the named insured if involved in an out-of-state accident. No general principles can be deduced from the statutes concerning the treatment of nonresidents or the fate of tort immunity protection once a state's border is crossed. These issues invite judicial clarification.

Finally, the overwhelming majority of state systems make no provision for catastrophic cases where the injury necessitates medical expenses overleaping the aggregate, mandated limit for

no fault benefits. Only in New Jersey and Michigan, which prescribe no ceiling for medical expenses, is a reinsurance mechanism provided to protect the insured and the insurer.

The ineluctable conclusion is that the legislatures, whose reparations systems are described in this study, have very divergent opinions of the scope of protection they are willing to accord automobile accident victims, and that the injured party's recovery may be determined by the happenstance of geography.

[ED. NOTE: Substantial changes (not available in their official statutory form) in Pennsylvania's insurance law were effected as this issue goes to publication. Tort action limitations are abolished; the limits of required first party benefits have been revised. The effective date is October 1, 1984.]