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THE EFFECT OF THE NO-FAULT
AUTOMOBILE INSURANCE LAW ON
ROAD COMMISSION
VEHICLES AND EQUIPMENT

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16. Abstract The No-Fault Automobile Insurance Law made a major change in Michigan law as it relates to compensation for vehicle-related injuries to persons and damage to vehicles. A road commission is affected by the law as an employer and as an owner of vehicles, equipment, and other property. This report explores the effects of No-Fault on a road commission, including its liability to motorists for injury and property damage; the liability of motorists to the commission for damage to its registered vehicles, its unregistered road equipment, and its other property; and the liability of such motorists to the commission's employees.					
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INSURANCE LAW ON ROAD COMMISSION
VEHICLES AND EQUIPMENT

Introduction

Michigan's No-Fault automobile insurance law [No-Fault] made substantial changes in the way persons involved in automobile crashes are compensated for personal injuries and for damage to their property. The effect of No-Fault on a road commission's liability for defective roads is discussed in another report. This report discusses the effect of No-Fault on road commission operations. It begins with a discussion of the No-Fault law in general, and then describes the effects of No-Fault on road commissions as vehicle owners and as owners of unregistered equipment and owners of other property.

The No-Fault Law

Laws have traditionally determined responsibility for injuries in a traffic crash on the basis of fault. This was expressed in the concept of negligence, the failure to use ordinary care in the situation in which the accident occurred. Thus, the injured party, in order to receive compensation, was required to prove that the "other driver" had been careless. The other driver was then personally responsible to compensate the injured person. However, the other driver, even if he was negligent, could avoid paying the injured party by showing that the injured party was also negligent (1). This concern with establishing fault often led to numerous and long trials and was thought to be a major cause of court congestion. The result was that a legitimate claim for a large amount of money, where the injuries were severe, was likely to be settled for less than it was worth, because the injured party needed

the money. On the other hand, a small claim could often be settled for more than it was worth just because it was cheaper to settle it than to pay to defend it.

Dissatisfaction with the operation of the negligence system led to the passage of the No-Fault law in 1972 (2). That law has been upheld by the Michigan Supreme Court (3). Because the No-Fault law is fairly recent and complex, it will be described relatively completely in the rest of this section.

In general, it can be said that No-Fault changed the focus of the injury compensation system. Before No-Fault, the focus was on the personal fault of the driver. After No-Fault it is on the insurance maintained by the vehicle's owner.

The No-Fault law eliminated liability for negligence and replaced it with insurance benefits available from the injured person's own insurer (4). There are two important exceptions to this rule. Liability for negligence is retained where (a) the damages for "economic loss" (wages, expenses, etc.) exceed the amounts paid for these losses under the insurance, and where (b) the injured person suffers "death, serious impairment of body function or permanent serious disfigurement" (5). These exceptions establish a "threshold." Below the threshold, liability for negligence is abolished. Above the threshold, lawsuits for damages based on fault are still permitted. Therefore, it is clear that the No-Fault law is intended, not to abolish liability for negligence altogether, but to limit it to the more serious cases. It follows that if it does apply to suits against a commission, No-Fault will eliminate only the lesser ones, not those where the injuries are greater.

No-Fault changed the focus of the compensation system from the conduct of the drivers to the insurance of one's own vehicle. Insurance is mandatory under No-Fault. To register a motor vehicle in Michigan, its owner must present proof of insurance (or be an approved self-insurer) (6). Three types of insurance are required: personal injury, property

damage, and "residual liability." "Collision insurance," that is, insurance for damage to one's own vehicle, is not required. Residual liability insurance covers accidents occurring out of state, but more important, it covers cases where the driver covered by the policy is at fault and the injuries are above the threshold. These are the cases where claims against the negligent driver are still permitted by No-Fault. Personal injury and property damage coverage are discussed below.

No-Fault's personal injury provisions make the insurers of owners and operators of motor vehicles responsible for "economic" losses suffered by the occupants of their vehicle (7). Economic losses include out-of-pocket expenses, lost wages, and loss of support. Out-of-pocket expenses include the cost of supplies, services, and accommodations during treatment and recovery. Lost wages are limited to the first three years after an accident (8).

As long as a person's injuries are below the No-Fault threshold, he is not permitted to sue for damages. But if the losses exceed the No-Fault benefits, or if the injuries involve death, serious impairment of body function, or permanent serious disfigurement, then the injured person is above the threshold and can sue for damages based on negligence.

Within the threshold limits of No-Fault coverage, however, the financial responsibility for an accident is on the insurer of the owner or operator of the vehicle occupied by the injured person. This personal injury protection carried by the vehicle (i.e., by its owner) applies to all the occupants of the vehicle. This coverage applies whether the vehicle is privately owned or owned by a company and driven by an employee. Therefore, if the owner of the vehicle is driving it and he and a passenger are injured, they both receive compensation from the owner's insurer. If the vehicle is uninsured, then the occupants are compensated by the driver's insurer. If neither the owner nor the driver is insured, then the occupants look to the insurance on their own vehicles (9).

No-Fault's property damage provisions make the insurers of owners and operators of motor vehicles responsible for the cost of accidental damage to physical property "arising out of" the use of property but are limited to the lesser of repair or depreciated replacement cost. The maximum liability of an insurer in any single accident is limited to one million dollars. No-Fault benefits will not pay for damage to the motor vehicle itself unless, at the time of the accident, it was properly parked and was struck by another vehicle (11). Insurance for damage to one's own vehicle can be obtained by purchasing a separate "collision rider," usually with a "deductible" provision, whereby the insured pays a certain amount and the insurer pays the excess. These riders typically waive the deductible if the driver was not at fault in the accident. However, collision riders are not mandatory under No-Fault. They are options available to persons who want this protection in exchange for additional premiums. The extent of this coverage is a contractual matter between the insurance company and the vehicle owner and is spelled out in the provisions of the policy.

Registered Road Commission Vehicles

Some road commission vehicles are registered for use on the highways. As to these vehicles, the commission is in the same situation as any other owner of a fleet of vehicles and not far different from a private vehicle owner.

The description of No-Fault above therefore applies to a road commission. Briefly, this means that an injured person would first seek compensation from the insurer of the vehicle he occupied. If the vehicle were not insured, next in line to pay is the driver's insurer, followed (in the case of a passenger) by the passenger's own insurer. If the personal injuries are above the threshold, the normal rules of negligence liability would apply. Unless one of the vehicles was properly parked, compensation for damage to the vehicle itself would not be paid under the property damage coverage of No-Fault; it would be covered under the optional collision coverage if the owner had such coverage. The vehicle's No-Fault property damage coverage would apply to any non-vehicle property damage, such as signs or fences.

There is one modification of this scheme which arises out of the fact that the road commission is also an employer. If a commission employee were injured, the road commission's worker's compensation insurance would provide benefits before the commission vehicle's No-Fault insurance became available (12).

Unregistered Commission Equipment

No-Fault applies only to motor vehicles that are required to be registered in Michigan (13). Some of a road commission's equipment, though motorized, is not required to be registered and therefore is not insured under No-Fault. Graders and mowers fall into this category. If a piece of road commission equipment is involved in an accident with a registered vehicle, both the personal injury and the property damage provisions of No-Fault will apply.

If the occupants of the registered vehicle are injured, they will look for payment first to the insurer of their vehicle, then to its driver's insurance, then to their own. No-Fault abolishes any claim against the road commission just as it would if a registered commission vehicle were involved. Only if their injuries are above the threshold can the injured persons sue the road commission for negligence.

A road commission employee who is operating unregistered equipment is not an occupant of a registered motor vehicle. The No-Fault law therefore treats him in the same way it treats pedestrians. If he is injured in a collision with a registered motor vehicle, he will receive benefits from the insurance of the vehicle's owner or driver. He can sue the other driver for negligence only where his injuries are above the threshold. Because he is an employee, he would also be covered by worker's compensation insurance, which would provide benefits before the No-Fault policies.

If the other vehicle were damaged, compensation would be determined under the No-Fault law. That is, its owner must bear the loss himself unless he has the optional collision coverage. The road commission would not be liable for the damage.

If the road commission's equipment is damaged, however, the commission is entitled to be paid without regard to fault under the property damage coverage of the other vehicle or its driver, because property damage coverage applies to all physical property except registered motor vehicles (14).

If the other vehicle involved in the accident was not a registered motor vehicle--for example, a farm tractor--then No-Fault would not apply at all and the rules of negligence would govern. Such situations are likely to be rare.

Damage to Road Commission Property

Motor vehicles can also cause damage to road commission property. Examples of such damage might include knocking over or denting signs, guardrails, or fences. Road commission property of this type is in the same category as the commission's unregistered road equipment. The commission should be able to claim for such damage against the property damage provisions of the No-Fault insurance carried by owners or operators of other vehicles involved.

Conclusions

A companion report has analyzed the effect of No-Fault on a road commission's liability for defective road maintenance. This report considers its application to the road commission as a vehicle and property owner.

- As to its registered vehicles, the commission is in the same situation as any other employer that is also a fleet owner. Its vehicle coverage, along with worker's compensation coverage, protects the vehicle's occupants.
- If unregistered road commission equipment is involved in an accident with a motor vehicle, the occupants of the motor vehicle are not entitled to claim against the commission for injuries, unless those injuries are above the No-Fault threshold. They must instead look to their own No-Fault insurers.

- If unregistered road commission equipment is damaged in an accident with a motor vehicle, the commission is entitled to compensation under the No-Fault property damage insurance of the other vehicle.
- The commission is entitled to compensation under the No-Fault insurance of a motor vehicle or its driver for damage caused by that vehicle to Commission property such as signs and fences.

FOOTNOTES

1. Since the recent case of Placek v City of Sterling Heights,
Mich. _____, N.W.2d _____
(February 8, 1979), which adopted comparative negligence,
each person's negligence reduces his recovery.
2. M.C.L.A. 500.3101, et seq., M.S.A. 24.13101 et seq.
3. Shavers v. Kelly, 403 Mich. 554, 267 N.W.2d 72 (1978)
4. M.C.L.A. 500.3135, M.S.A. 24.13135; M.C.L.A. 500.3101, M.S.A.
24.13101
5. M.C.L.A. 500.3135, M.S.A. 24.13135
6. M.C.L.A. 500.3101, M.S.A. 24.13101
7. M.C.L.A. 500.3105, M.S.A. 24.31305
8. M.C.L.A. 500.3107, M.S.A. 24.13107
9. M.C.L.A. 500.3114, M.S.A. 24.13114
10. M.C.L.A. 500.3121, M.S.A. 24.13121
11. M.C.L.A. 500.3123, M.S.A. 24.13123
12. M.C.L.A. 500.3109, M.S.A. 24.13109
13. M.C.L.A. 500.3101, M.S.A. 24.13101
14. M.C.L.A. 500.3121, M.S.A. 24.13121