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NO-FAULT AUTO INSURANCE

By Dean Sugano

Q1: *What is "no-fault auto insurance"?*

A1: No-fault auto insurance is a short hand reference to two things. First, it is the insurance that the law in Hawaii requires every motor vehicle to have if that vehicle is to be operated on the public roadways. Second, it refers to the fact that in the event of an accident, certain benefits are paid without regard to fault. The required coverage includes personal injury protection benefits for the insured's own injuries as well as liability coverage for personal injuries and property damage that the insured causes to the people in the other vehicle and the other driver's vehicle.

Q2: *Why do we have no-fault auto insurance in Hawaii?*

A2: There are three reasons:

- (1) To create a system of reparations for accidental harm and loss arising from motor vehicle accidents,
- (2) To compensate these damages without regard to fault, and
- (3) Limit tort liability for these accidents.

The Legislature's purpose in changing the motor vehicle insurance system from a tort (fault) to a no-fault system was to enable people in most (but not all) traffic accidents, to more quickly obtain insurance proceeds to pay for medical attention to their injuries. Under the traditional fault system, an injured person might have to wait for a long time, possibly years, to obtain any benefits because none would be paid until a determination was made as to who was at fault.

Q3: *How does "no-fault" insurance differ from "fault" insurance?*

A3: Under a traditional fault-based system, insurance companies make payments based on each person's degree of fault in a particular motor vehicle accident.

In contrast, when there is an accident under a no-fault system, the insurer automatically pays for the insured's damages, regardless of fault, up to some specified policy limit. In exchange for this guaranteed payment, the insured must give up to some degree the right to sue the other driver involved in the accident.

Q4: *Do other states have "no-fault" insurance?*

A4: A majority of states do not have any kind of "no-fault" system at all. They function under a traditional fault-based system. A minority of thirteen states follows a modified no-fault system. None of the states follows a pure no-fault system.

In Hawaii, the "modified" or "partial" no-fault system applies to most personal injuries (except the most serious cases involving death, serious bodily injury or comparatively high cost) and property damage to the insured's own vehicle (but not the liability for damages to another vehicle damaged by the insured). The traditional fault system applies to the injuries not covered by the no-fault system.

Under a pure no-fault system, the insurer pays for any economic damages such as medical bills and lost wages up to the policy limit. The insured on the other hand would be completely prohibited from suing a negligent driver for "non-economic" damages such as pain and suffering and loss of companionship.

Under Hawaii's modified no-fault system, the insurer still pays for economic damages up to the policy limit, but the insured may be allowed to sue for non-economic damages if the amount of these damages exceeds a specified tort threshold. The threshold can be either verbal or monetary or a combination, and is designed to limit lawsuits to only the more serious injuries.

Q5: *Are there other kinds of insurance that are required by law for all drivers of motor vehicles?*

A5: The insurance company is required to offer other types of coverage such as uninsured motorist coverage, underinsured motorist coverage, collision coverage, and comprehensive coverage. Uninsured motorist coverage provides insurance against

losses caused by someone who is completely uninsured. Underinsured motorist coverage provides insurance against losses caused by someone who has less than adequate insurance to cover the loss. Collision coverage provides insurance against damage to the insured's vehicle caused in an accident. Comprehensive coverage insures against all other physical damage to the vehicle caused by such events as fire, theft, flood, and vandalism. The insured is free to reject these types of coverage.

Q6: *Are there other kinds of insurance that are not required by law, but are made available to drivers of motor vehicles? What are they?*

A6: These are the coverages that the insurance company offers on their own, such as towing and labor coverage or transportation expense coverage. Optional towing and labor insurance provides coverage for emergency road service and towing. Transportation expense coverage pays a set amount per day for transportation expenses (including a rental car) if the insured's car is being repaired because of an accident. The law does not address these other types of coverages.

Q7: *Does the State regulate insurance companies that sell motor vehicle insurance? How?*

A7: Yes, they are required to be licensed by the Insurance Commissioner.

Insurance companies are required to file any changes in their rates with the Commissioner. The Commissioner also handles complaints made against insurers for, among other things, unfair or discriminatory practices, and publishes informational materials on the no-fault law, including a comparison of the rates charged by insurers in the State for no-fault policies.

For information see generally

http://auto.insurance.com/insurance_options/auto/auto_basics_index.asp

Q8: *I understand the law requires every motor vehicle to be covered by insurance. What does the law require?*

A8: The law requires the policy to have three basic types of coverages. The first is personal injury protection benefits for accidental harm to the insured. The insured must have this type of coverage. These benefits cover the insured's medical expenses up to at least \$10,000. The second is the liability coverage for accidental harm and property damage that the insured causes to others. The insured must have this type of coverage. The accidental harm portion must have a limit of not less than \$20,000 per

person while the property damage portion must have a limit of not less than \$10,000 for all damage. The third coverage is uninsured and underinsured coverage. The insurer must offer, but the insured has the option to reject this type of coverage. The coverage is triggered when the insured suffers accidental harm because of the other driver's negligence but the other driver either does not have insurance or does not have enough insurance to cover the insured's damages. Uninsured and underinsured coverage acts as a substitute for or supplement to the other driver's liability coverage for accidental harm to the insured.

Q9: *I've heard that "bodily injury" liability insurance is required. What does this mean?*

A9: Technically, the coverage is for "accidental harm", which includes bodily injury, death, sickness, or disease. This type of coverage is triggered when the insured causes the motor vehicle accident and harms others. The coverage pays for the other person's accidental harm.

Q10: *You mentioned that "property damage" liability is required. What does this mean?*

A10: This type of coverage is triggered when the insured causes the motor vehicle accident and damages the other person's car. The coverage pays for the damage to the other car.

Q11: *If we have "no-fault" in Hawaii, why do we still have lots of lawsuits involving auto accidents?*

A11: Hawaii's "partial" no-fault law does not abolish tort liability for serious motor vehicle accidents. In those cases persons may still sue drivers for negligent driving. Serious motor vehicle accidents are those where someone dies or is so seriously injured that there is significant permanent loss of use of a part or function of the body or permanent and serious disfigurement. Tort liability is also not abolished where the tort threshold is exceeded. The tort threshold is exceeded when the personal injury protection benefits incurred by a person exceed \$5,000. Lastly, the no-fault law does not abolish tort liability for property damage. Thus, persons may still sue for property damage.