

TORT TRIAL AND INSURANCE PRACTICE

AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION



Committee Newsletter | Summer 2017

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Letter from your YLD TIPS Co-Chairs

*By Charles Coffey, Esq. *, and Domenick Lazzara, Esq. ***

Before we close out the 2016-2017 Bar Year, we wanted to take a moment to thank you for your support, participation, and contribution. It was an honor to Co-Chair such an important Committee; a Committee with practice areas that touch practitioners hailing from the golden shores of Honolulu to the bustling streets of New York City.

It's been an incredible year for your ABA YLD TIPS, including: 1) participation at every major ABA and ABA YLD Conference this year; 2) numerous co-sponsorship opportunities with "Big" TIPS and other YLD Committees, most notably the YLD Litigation Committee; 3) activities focused on increasing membership at the law school and committee levels; 4) collaboration with "Big" TIPS, including attendance at the TIPS Section Conference in Chicago; 5) a teleconference focused on the implications of autonomous vehicles, featuring speakers from across the country; 6) and numerous published articles, newsletters, and presentations, including this final of four content-packed newsletters.

None of this would have been possible without your support. None of this would have been possible without your participation. And none of this would have been possible without your contribution. For this, and much more than we could ever fit into these pages, we want to say thank you. It's been an honor to serve ABA YLD TIPS, and to embark on the journey ahead with each of you, together.

Sincerely Yours,

Charles Coffey, Esq.
Senior Claims Counsel
The Bar Plan Mutual Insurance Company

-and-

Domenick Lazzara, Esq.
Partner
Lee & Lazzara, PLLC

* **Charles Coffey** is Senior Claims Counsel at The Bar Plan Mutual Insurance Company in St. Louis, Missouri, a legal malpractice insurer that writes policies in Missouri, Kansas, Indiana, New Mexico, and Tennessee. Prior to joining The Bar Plan, Coffey practiced civil litigation, with a defense-oriented emphasis on insurance issues, telecommunications, and commercial cases, for a boutique firm in South Florida. Coffey enjoys being involved in the legal community, and holds positions on the Missouri Bar Young Lawyers' Section Council and the Young Lawyers' Division of the Bar Association of Metropolitan St. Louis.

** **Domenick Lazzara** is a Partner with Lee & Lazzara, PLLC, a four-attorney litigation law firm in Tampa, Florida. Domenick practices business, corporate and civil litigation, with a focus on Personal Injury and Professional Liability, and is an adjunct professor at the University of Tampa, Sykes College of Business, teaching Business and Entrepreneurship Law. Next year, Domenick will serve as an ABA Membership Advocate and Vice Director for the ABA YLD Membership and Marketing Team. You can contact Domenick directly at 813.606.5036, or by email at: dlazzara@leelazzara.com.

ARTICLE

Minnesota No-Fault, A System That Works When Others Don't

By Nicholas S. Sweeney, Esq.*

Today, Americans are faced with the harsh realities of rising insurance premiums, skyrocketing deductibles, and seemingly uncontrollable medical bills. Although there are no official numbers, it is estimated that 643,000 Americans declare bankruptcy every year because of medical bills.¹ Individual healthcare marketplace insurance premiums rose as much as 116% in 2017 in Arizona and 59% in my home state of Minnesota.² The future of health insurance markets is uncertain, in part because there is no clear message or agenda coming out of Washington D.C. The future of the Affordable Care Act ("ACA") and the American healthcare system is in flux. The continued uncertainty will lead to further destabilization of the insurance markets and rising costs for everyone. Both sides of the aisle should agree that the American healthcare and health insurance models are deeply flawed and need fixing. There is one approach in Minnesota that - in comparison - works well and puts injured people first: the No-Fault insurance system, which mandates Personal Injury Protection ("PIP") coverage. I have represented recipients of No-Fault benefits and I know for a fact that their lives have been

¹ Kim LaCapria, *Money, Cash, Threes: A Popular Meme Holds that 643,000 Americans go Bankrupt Every Year over Medical Bills, but the Underlying Math is Elusive*, Snopes, Apr. 22, 2016, <http://www.snopes.com/643000-bankruptcies-in-the-u-s-every-year-due-to-medical-bills>

² Janna Herron, *Here's How Much Obamacare Premiums Are Rising in All 50 States*, The Fiscal Times, Dec. 21, 2016, <http://www.thefiscaltimes.com/2016/11/01/Here-s-How-Much-Obamacare-Premiums-Are-Rising-All-50-States>.

improved by the No-Fault Act (hereinafter, the “Act”). Insurance companies and tort-reformers consistently raise issues of high cost, fraud, and abuse. This article will focus on the positive impact the Act has had on my clients’ recovery from both physical and economic injury.

Minnesota’s no-fault insurance system was implemented in 1975. The goals of the No-Fault Act were to ensure that everyone injured in a motor vehicle accident had a source to go to for benefits. It was a noble and compassionate endeavor with the goals of helping injured people, sharing the cost, and cutting down on costly litigation. Fault does not play a role in the determination of who can receive No-Fault benefits, hence the name No-Fault. The Act set forth which policy an individual goes to as his/her source for No-Fault benefits, and also includes an alternative source for No-Fault benefits through the Minnesota Automobile Assigned Claims Bureau which provides No-Fault benefits to qualified persons who, through no fault of their own, have no policy of insurance available to them.³ Today, all owners and drivers of cars and trucks in Minnesota are required to have No-Fault insurance.⁴ All car or truck accidents in Minnesota are covered by the Minnesota No-Fault law, which does include exceptions where there is no coverage, but the same fall beyond the scope of this article.⁵ In Minnesota, regardless of who is at fault, if an injury is suffered while occupying a vehicle, No-Fault insurance covers the first \$20,000.00 of medical bills and \$20,000.00 of other benefits including reimbursement for home cleaning, lawn care, mileage to and from treatment, snow removal and others.⁶

As an attorney who exclusively represents injured people in Minnesota, I have interacted with both the No-Fault system and all forms of health insurance. In the mess that defines the American healthcare and health insurance systems, car accident victims in Minnesota are blessed by the foresight of 1974 Minnesota legislature. Those lawmakers probably did not foresee the economic issues associated with healthcare, the 74,772 traffic crashes in Minnesota that were reported in 2015, or the 205 reported crashes in Minnesota per day⁷. In 2015, 411 people died of traffic collisions in Minnesota and 181,663 were injured; this according to a study produced by the Minnesota Department of Public Safety.⁸

³ Jeannie Provo-Petersen, Esq., *A Guide to the Minnesota No-Fault System* (2016), available at http://www.ppalawfirm.com/resources/PPA_NoFault_MN_Guide.pdf (last visited August 1, 2017).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Minnesota Motor Vehicle Crash Facts 2015* (2016), Minnesota Department of Public Safety, available at <https://dps.mn.gov/divisions/ots/reports-statistics/Documents/2015-crash-facts.pdf> (last visited August 1, 2017).

⁸ *Id.*

In Minnesota, recipients of No-Fault benefits can get any medical treatment they want if the treatment is “reasonable, necessary, and related.”⁹ Courts in Minnesota have interpreted this reasonable, necessary and related standard liberally and construed it in favor of injured people in the spirit of the Act. In practice, this means that an injured person can seek almost any medical care they chose. No-Fault benefits do not operate on networks like standard healthcare plans. A No-Fault recipient can see any doctor or specialist they please so long as the treatment is reasonable, necessary, and related. This gives injured people freedom that is missing in the greater healthcare system. The No-Fault act also covers additional treatment that is rarely covered by standard health insurance. No-Fault recipients can receive chiropractic treatment, massage therapy, acupuncture, and other treatments that are not covered or fully covered by traditional health insurance. Many of my clients prefer these types of treatments and appreciate the option to utilize all the rehabilitation available. The No-Fault Act gives injured people the freedom to choose the treatment that works best for them without the constraints of health insurance networks. The freedom to choose is a great benefit of the Minnesota No-Fault system, other states and the country at large can learn from it.

The No-Fault Act allows people injured in car accidents to get medical care free of charge up to \$20,000. No-Fault recipients in Minnesota do not have to meet any deductibles or deal with co-pays. All they need worry about is treating and getting better. In the United States, nearly one in ten American adults delay medical care because of cost.¹⁰ According to a Kaiser Health tracking poll in 2017, 45% of Americans said they would have trouble paying a \$500 medical bill.¹¹ About 19% would not be able to pay it at all, while 20% would put it on a credit card and pay it over time.¹² From that same survey, 60% of insured Americans with Medical bills blow through most or all of their savings.¹³ The statistics surrounding medical debt in the U.S. are staggering.¹⁴

⁹ Minn.Stat § 65B.44

¹⁰ Cynthia Cox and Bradley Sawyer, *Despite Lower Rates of Access Barriers for some Groups, Health Costs Remain a Concern for many Americans*, Peterson-Kaiser Health System Track, Nov. 30, 2016, <http://www.healthsystemtracker.org/brief/despite-lower-rates-of-access-barriers-for-some-groups-health-costs-remain-a-concern-for-many-americans..>

¹¹ *Id.*

¹² Bianca DiJulio, et al., *Data Note: Americans' Challenges with Health Care Costs*, Mar. 2, 2017, <http://www.kff.org/health-costs/poll-finding/data-note-americans-challenges-with-health-care-costs>.

¹³ *Id.*

¹⁴ *10 Statistics about US Medical Debt that Will Shock You*, National Bankruptcy Forum, May 17, 2017, <http://www.natlbankruptcy.com/us-medical-debt-statistics/>

The 181,663 people who were injured in car accidents in Minnesota in 2015¹⁵ benefited from a system that was designed to help them. Minnesota and twelve other states have no-fault insurance that provide different levels of benefits to injured people¹⁶. Due to the problems in the healthcare and health insurance systems, states should expand no-fault coverage, not get rid of it.

**Nicholas S. Sweeney, Esq., is an attorney with the Law Offices of Daniel J. Brazil, P.A., in Minneapolis, Minnesota. Nick exclusively represents injured clients who appreciate his personal touch and value his diligence in seeking maximum compensation to deal with their medical bills, lost wages and other challenges. He spends his free time remaining active in martial arts, tennis and soccer.*

NEWS AND ANNOUNCEMENTS

TIPS CO-SPONSORS POST-TRIAL CONSIDERATIONS TELECONFERENCE

YLD TIPS co-sponsored the *Post-Trial Considerations* Teleconference, part of the YLD Litigation Committee's formidable "Litigation Week", which took place on July 26, 2017. The Teleconference included topics on post-trial discovery in aid in the execution of judgments, recovering attorneys' fees, and remitturs and additurs. YLD TIPS Co-Chair, Domenick Lazzara, was one of the featured speakers, focusing on recovering attorneys' fees post-trial.

REPORT FROM TIPS SECTION CONFERENCE IN CHICAGO, ILLINOIS

The Third Annual Tort Trial and Insurance Practice Section Conference was held in Chicago from April 26 through April 28, 2017. The sessions were well attended by in-house counsel, insurance professionals, and members of the plaintiffs' and defense bar. Seasoned members of the bar provided over 24 hours of CLE programming related to various topics such as litigation management, the ethical implications of implicit bias, appealing to millennial jurors, and extra contractual insurance claims. The various TIPS committees also held various meetings and outings to further engage their members in the important work of the Section. There were numerous social events as well, including a Young Lawyers' Social Networking

¹⁵ Minnesota Department of Public Safety, *supra* note 7.

¹⁶ *No Fault Insurance*, Insurance Information Institute, February 2014, <http://www.iii.org/issue-update/no-fault-auto-insurance>.

Reception and a dinner at the Mid-America Club on the 80th floor of the Aon buildings, which provided an amazing view of the Chicago skyline and Lake Michigan. TIPS is always looking for young lawyer members. Please especially consider making TIPS your new home after you are no longer a member of YLD!

REPORT FROM YLD SPRING CONFERENCE

The 2017 American Bar Association, Young Lawyers Division Spring Conference took place this year in Montreal, Quebec. Our hats off to the ABA YLD, Host Committee, and Montreal Bar, for putting together what – in the humble opinion of your YLD TIPS co-chairs – was the best YLD Spring Conference yet! One of the many highlights from this year's conference was Personal Executive Coaching by Debra Forman, who also presented to a packed room on the topic of *Beijing] a Trusted Advisor: Leadership, Communication, and Relationship Building Skills*. "Big" TIPS, in conjunction with your YLD TIPS, presented another fabulous CLE: Anatomy of a Solo/Small Firm – Slaying Goliath. This series has been a huge success, and this latest one was sure to follow suite. Lastly, the YLD Dinner Dance at the Centre des Sciences de Montreal was truly an out-of-this-world event, featuring young lawyers from across the globe, in the best setting Montreal had to offer, and a carnival-styled feast ranging from mini-gourmet hot dogs to foi gras cotton candy! For those that came out and made the trip to this year's YLD Spring Conference, MERCI BEAUCOUP!

ABA ANNUAL MEETING IN NEW YORK

Start making plans now to attend the ABA Annual Meeting in New York, New York from August 10-13, 2017. Among many amazing events, the Annual Meeting has nine CLE Showcase programs, 100+ entity CLE programs, many roundtable sessions, and various tours allowing you to experience all that New York City has to offer. Some tours include: The National September 11 Experience, New York Orientation Tour – A Slice of the Big Apple, and Lincoln Center: A Behind the Scenes Perspective with the GC. Please register for the meeting by selecting "REGISTER" on the following webpage: [ABA YLD NYC Registration Page](#). Finally, a full schedule of YLD Events at the ABA Annual can be found [here](#).

SECOND YLD TIPS IN-PERSON MEET UP PLANNED

While at the ABA Annual, your ABA YLD TIPS will plan its second In-Person Meet Up of the year, to take place during the ABA Annual Section Connect Fair for Young Lawyers, at the Grand Hyatt, New York, 109 E 42nd Street, New York, New York, from 12:00 PM to 1:00 PM. Look for your Co-Chair, Domenick Lazzara, as well as fellow ABA YLD TIPS Members, for an opportunity to put a face with a name. Feel free to text Domenick directly at: 305.575.9463.