

# PENNSYLVANIA'S LIMITED TORT OPTION



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This book is solely intended to provide public legal information regarding personal injury claims and insurance. None of the information in this book is intended to be formal legal advice, nor the formation of lawyer or attorney client relationship.

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# 1

## Preface

Jon Ostroff, Esquire, is well known for his expertise and success as a Pennsylvania limited tort lawyer. In this book, Jon will provide you with the tools to understand:

- The limited tort option and its effect on your claim for compensation if you are injured in a motor vehicle accident in Pennsylvania.
- The differences between full tort and limited tort insurance coverage.
- Who is covered by your limited tort insurance policy.
- The exceptions to limited tort.
- Whether to select and purchase limited tort or full tort insurance when you obtain or renew your insurance policy.
- The minimum insurance that all Pennsylvania motorists are required to maintain.

If this book does not address a question you have about the limited tort option or any other issue related to your insurance coverage, please email your question to Jon Ostroff, Esquire, at [jostroff@ostrofflaw.com](mailto:jostroff@ostrofflaw.com).

*Please note that the full statutory language for each insurance section that is referred to in the content of this book (e.g., “See 75 Pa. Cons. Stat. § 1711,”), may be found in the Appendix at the end of this book.*

# 2

## Introduction

For more than two decades, Pennsylvania drivers have been given a choice between two types of insurance coverage. The first is known as “full tort” insurance and the second is known as “limited tort” insurance. The Pennsylvania Motor Vehicle Financial Responsibility Law, passed in 1990, provides Pennsylvania drivers and motor vehicle owners with this choice between “limited tort” and “full tort.”

While limited tort insurance coverage is typically slightly less expensive than full tort insurance coverage, the choice between the two types of insurance policies can have significant consequences if you are injured in a car accident caused by the negligence of another person. Every Pennsylvania driver should completely understand the differences between the full tort and limited tort insurance options before signing a car insurance contract.

By being informed about these important insurance issues pertaining to the limited tort insurance option, you will then understand how these insurance options will impact you in the event that you have been involved in a Pennsylvania motor vehicle accident. Further, when it is time to purchase or renew your automobile insurance, you will be in a better position to understand why Pennsylvania motor vehicle owners are much better off choosing the full tort insurance option over the limited tort option.

# 3

## Minimum Insurance Coverage Required in Pennsylvania

Regardless of whether you choose the full tort or limited tort insurance option, Pennsylvania law requires you to maintain liability insurance coverage. **See 75 Pa. Cons. Stat. § 1711.** At a minimum, Pennsylvania law requires all insured drivers to pay for and maintain a liability insurance policy that provides coverage of up to \$15,000 per individual, and \$30,000 to all individuals who are injured in a Pennsylvania motor vehicle accident. **See 75 Pa. Cons. Stat. § 1702.** Liability insurance is intended to protect and cover the driver who causes a motor vehicle accident.

Additionally, Pennsylvania requires vehicle owners to purchase at least \$5,000 of “first party medical benefits.” These medical benefits cover your medical bills that are related to an injury or injuries that you sustain in a car accident. Your insurance company will be responsible for paying your medical bills *regardless of who was at fault for a car accident that caused you to sustain an injury.* **See 75 Pa. Cons. Stat. § 1702.**

Higher amounts of virtually all insurance benefits are available and should be considered. Also, additional types of motor vehicle insurance are available, such as insurance to cover income you lose because of injuries you sustain in an accident, or insurance to protect you financially if you are injured by an uninsured driver (called “UM,”) or an underinsured driver (called “UIM”) who does not carry enough liability insurance to compensate you and your family members fully for your injuries and losses. **See 75 Pa. Cons. Stat. § 1731.**

If you were at fault for causing an accident and the value of the injuries, losses and/or damage you cause to another party or parties exceeds the amount of your insurance coverage, then the other parties may pursue your assets in order to pay for their damages and losses. It is therefore important to maintain Pennsylvania car insurance in an amount that will adequately protect your property and financial interests.

Your potential financial recovery for injuries and losses you might sustain in a motor vehicle accident may be impacted by whether you selected full tort insurance coverage or the limited tort option. The remainder of this book will be dedicated to explaining the impact of this important decision.

# 4

## When Are You Covered by the Limited Tort Insurance Option?

A Pennsylvania motor vehicle owner decides whether to purchase full tort or limited tort insurance coverage at the time he or she purchases or renews car insurance. If you choose limited tort coverage, then you are bound by the terms of the contract until you change your selections and a new insurance contract becomes effective.

Additionally, if you own a motor vehicle that is currently registered in Pennsylvania but is uninsured, you will be treated as if you selected the limited tort insurance option. As a result, you may be prevented from obtaining a financial recovery for your injuries caused by a negligent driver. The Pennsylvania Motor Vehicle Financial Responsibility Act provides that the owner of a currently registered vehicle who fails to purchase motor vehicle insurance – as required by Pennsylvania law – is deemed to have selected the limited tort insurance option if he or she is injured in a Pennsylvania motor vehicle accident. **See 75 Pa. Cons. Stat. § 1705(a).**

# 5

## When Does Your Limited Tort Policy Apply to Others?

Not only does the decision about whether to select the full tort or limited tort insurance option affect the motor vehicle owner, this decision often impacts other relatives who reside with the named insured.

“Resident relatives” of the named insured will be bound by the insured person’s tort option selection if they:

- do not own a motor vehicle in their name;
- *and* are not a named insured on their own insurance policy;
- *and* reside with the named insured;
- *and* are related to the named insured.

Some examples of “resident relative” include the following categories of individuals who reside with and share one of the following relationships with the named insured:

- biological children or stepchildren;
- a spouse;
- siblings;
- parents;
- stepparents;
- grandparents;
- first aunts or uncles and more distant relatives in some cases.

*Here are some examples of individuals who are not considered “resident relatives” of a named insured, even if they reside with the named insured:*

- unrelated roommates or housemates;
- a live-in boyfriend or girlfriend, if not married to the named insured, even if they have children together. This includes same-sex partner marriages, even if legally recognized outside of Pennsylvania;
- foster children or foster parents;
- friends;
- relatives of someone in the household other than the named insured or his or her spouse

**See 75 Pa. Cons. Stat. § 1705(b)(2).**



# 6

## What Do Limited Tort and Full Tort Insurance Coverage Have in Common?

In order to understand how limited tort insurance is different from full tort insurance, it is important to first understand what the two types of insurance options have in common. Both full tort and limited tort insurance options allow an injured party *who is not the primary cause of a motor vehicle accident* to recover for unreimbursed economic losses from the party who caused the accident.

**“Unreimbursed Economic losses”** may include, but are not limited to:

- unreimbursed medical expenses, including co-pays, deductibles, and amounts owed out of a recovery for liens imposed by certain health providers;
- unreimbursed, lost income;
- property damage to your vehicle;
- specific out-of-pocket costs, such as for personal property that is damaged in an accident, including eyeglasses, laptop computers, damaged clothing, after-market radios or GPS, etc.

**See 75 Pa. Cons. Stat. § 1705(a)(1)A.**

Both limited tort and full tort insurance allow an injured party *who is not the primary cause of a motor vehicle accident* to recover for unreimbursed medical expenses from the party who caused the accident. **“Unreimbursed medical expenses”** include the costs incurred for reasonable and necessary medical treatment and rehabilitation services for injuries that are sustained in an automobile accident and are not covered by other insurance available to the injured party. Many health insurance policies have the right to be reimbursed for car accident-related medical bills they pay and this creates an enforceable lien. This lien is also recoverable from the party at fault, regardless of whether the injured party is covered by the full tort or limited tort insurance option.

Unreimbursed medical expenses can arise from many types of medical services. These services include, but are not limited to, hospital, dental, rehabilitation, surgical, psychiatric, psychological, osteopathic, ambulance, chiropractic, licensed physical therapy, nursing services, vocational rehabilitation, occupational therapy, speech pathology, audiology, optometry services, medications, medical supplies, and prosthetic devices.

**Loss of income.** Whether an injured party is covered by the full tort or limited tort insurance option, if a physician deems the injured person disabled and unable to perform his or her job responsibilities, the injured person may recover for:

- the wages lost from being out of work; or
- the cost of paying another person to perform the injured person's job responsibilities, if the injured person is self-employed.

**Property Damage.** Finally, regardless of whether you selected the full tort or limited tort option, if another person is at fault for causing your accident, you are entitled to be reimbursed for the cost of fixing or replacing your damaged vehicle.

**See 75 Pa. Cons. Stat. § 1705(d).**

Despite these similarities, there are still significant differences between full tort and limited tort insurance coverage.

# 7

## The Differences Between the Full Tort and Limited Tort Options

The most significant difference between full tort and limited tort insurance coverage relates to the recovery of non-economic damages. The most common non-economic damage is pain and suffering. However, non-economic damages also include loss of consortium (if the victim is married), loss of your ability to continue with your favorite hobbies, pasttimes, and household routines. **See 75 Pa. Cons. Stat. § 1705(a)(1)**. Pennsylvania accident victims who are covered by the full tort insurance option at the time they are injured in a car accident can sue for pain and suffering, loss of consortium, loss of life's pleasures, and other non-economic losses, regardless of the extent of their injuries and without consideration to any of the "limited tort exceptions," which are outlined in the next chapter. **See 75 Pa. Cons. Stat. § 1705(a)(1)B**. Quite simply, those insured by full tort policies can sue and may recover for non-economic, pain and suffering damages, as long as the driver who caused their accident was negligent or otherwise legally responsible for the accident injuries, damages or losses.

Pennsylvania accident victims who are covered by limited tort insured policies do not share the same unlimited right to sue for these non-economic damages. In order for an accident victim covered by limited tort insurance policies to recover for non-economic losses, including pain and suffering, he or she must be able to prove that they suffered a serious injury or that a circumstance of their accident falls into a specific exception to the restrictions of limited tort that would allow them to recover these damages. **See 75 Pa. Cons. Stat. § 1705(a)(1)A**.

# 8

## Limited Tort Exceptions # 1-#6: *When You Can Still Recover for Pain and Suffering*

Limited tort may limit an insured's right to recover non-economic damages in some accident cases, but not in all situations.

Pennsylvania law expressly allows those covered by limited tort insurance to recover non-economic damages in certain situations. **See 75 Pa. Cons. Stat. § 1705(a)(1)A.** In other words, there are circumstances in which a person who is insured by a limited tort policy can still recover these damages as if he or she has a full tort policy. This includes damages for non-economic injuries, such as pain and suffering. **See 75 Pa. Cons. Stat. § 1705(d).**

In order to recover for pain and suffering and other non-economic damages, a person covered by the limited tort option must have been injured in a motor vehicle accident that was the fault of another person and one of the **exceptions to limited tort** which are described below must apply. *It is important to note that only the serious injury exception to limited tort applies to Uninsured Motorist Benefits (UM) and Underinsured Motorist Benefits (UIM) claims submitted through your own insurance policy or for the policy covering the motor vehicle you were occupying at the time of the accident. The other exceptions only apply to a claim made against the other driver.*

**Limited Tort Exception #1: The person at fault was convicted of or accepted Accelerated Rehabilitative Disposition (ARD) for driving under the influence of alcohol or a controlled substance in the accident that caused the limited tort insured's injuries. See 75 Pa. Cons. Stat. § 1705(d)(1)(i).**

Also see "Driving under influence of alcohol or controlled substance" 75 Pa. Cons. Stat. § 3802.

Under this limited tort exception, it is not enough that the person causing the crash was arrested for driving under the influence of alcohol. The following conditions must also apply:

- The at-fault driver must have a blood alcohol content above the Pennsylvania legal limit of 0.08% at the time of the collision.
- The at-fault driver must have been convicted of drunk driving or accepted into an Accelerated Rehabilitative Disposition (“ARD”) program pursuant to **75 Pa. Cons. Stat. § 3807**.

**Limited Tort Exception #2: The person at fault for the accident was driving a vehicle registered in a state other than Pennsylvania. See 75 Pa. Cons. Stat. § 1705(d)(1)(ii).**

This exception applies to the vehicle involved in the crash rather than to the driver. For example, if the person at fault has a New Jersey driver’s license, but is driving a motor vehicle that is registered in Pennsylvania, then this exception would not apply. However, if the person causing the accident was driving a car registered in New Jersey, or any state other than Pennsylvania, then this exception would apply.

**Limited Tort Exception #3: The person at fault intends to injure himself or someone else. See 75 Pa. Cons. Stat. § 1705(d)(iii).**

This exception applies when a driver intentionally strikes another person, with the purpose of injuring another person, pedestrian or cyclist.

This exception clearly sets forth that it is not enough for the person’s action, or inaction, to be intentional. Nor is it sufficient for purposes of this limited tort exception for the person to have been aware that his or her action would create a grave risk of causing an injury. Furthermore, even if the act had been intentional, it would not constitute an exception to limited tort if the person was intentionally acting to avoid bodily harm. The intention of the other driver must be to *cause harm*, and then the intended harm occurs.

There is a very important practical consideration for this exception. In almost all cases, if a driver intentionally causes harm to another individual, this intentional act will usually not be covered by that person’s liability insurance policy. Virtually all liability insurance policies in Pennsylvania exclude injuries caused by the intentional acts of the insured driver.

**Limited Tort Exception #4: The person covered by limited tort insurance is injured in an accident caused by a defect in the design, manufacturing, repair or maintenance of a vehicle. See 75 Pa. Cons. Stat. § 1705(d)(1)(ii).**

If an accident was caused by a motor vehicle defect rather than the negligence of another driver, a person covered under a limited tort insurance policy may be able to recover non-economic damages. In order for this exception to apply, the injured party must be able to prove that the accident was the result of negligence by the vehicle manufacturer, mechanic, distributor, or seller.

**Limited Tort Exception #5: The person covered by limited tort insurance is injured while a passenger in a vehicle other than a private passenger motor vehicle. See 75 Pa. Cons. Stat. § 1702.**

If a person with limited tort insurance is injured while on a bus, in a commercial truck, as a pedestrian, in a taxi, on a motorcycle, in a recreational vehicle, in a rental vehicle, or in any other type of vehicle that is **not** a private passenger vehicle, then that person is entitled to recover for their pain and suffering damages against the negligent party's insurance company as if they chose the full tort option.

Pennsylvania law defines a private passenger motor vehicle as a four wheel motor vehicle that:

- Is insured by a person.
- Is a passenger car that is used privately and not rented to others, used by the public (such as a taxi cab), or used in livery conveyance.
- Has a gross weight of not more than 9,000 pounds.
- Is not principally used for commercial purposes (other than farming).
- Is not a recreational vehicle unintended for highway use.

**Limited Tort Exception #6: The person at fault has not maintained financial responsibility, or insurance, as required by the Motor Vehicle Financial Responsibility Law. See 75 Pa. Cons. Stat. § 1705(a).**

As a practical matter, this exception is rarely helpful. If the at-fault driver is uninsured, then the injured victim may either pursue their personal assets — which is rarely successful — or they can pursue UM coverage through their own insurance company. However, this limited tort coverage does not apply to a UM or UIM claim.

# 9

## Limited Tort Exception #7: The Most Common Exception: The Serious Injury Exception to Limited Tort

The “serious injury exception” is relied upon more frequently than any other limited tort exception. This exception is also the most challenging exception to rely on. However, if a serious injury can be proven, it will not only serve as an exception to limited tort in the claim against the negligent person who caused the accident, *it will also serve as an exception to an Uninsured Motorist (UM) or Underinsured Motorist (UIM) benefit claim for these benefits from the injured parties own insurance company.*

The “serious injury exception” is set forth in **75 Pa. Cons. Stat. § 1705(d)**. In order to prove that a serious injury was sustained under this statute and in accordance with court decisions in Pennsylvania, the victim must have either:

- Been fatally injured;
- Suffered a serious impairment of a bodily function; or
- Sustained a permanent, serious disfigurement. Note that a significant, prominent scar will often qualify as a “disfigurement.”

Unlike the exceptions discussed above, insurance companies often challenge and try to disprove the existence of a serious enough injury to overcome limited tort. In limited tort exceptions #1 through #6 discussed earlier, the application of an exception to a case is typically clear. For example, your car was either registered in Pennsylvania, or it was not. You were either a pedestrian when you were hurt, or you were not. The at-fault driver was either convicted of DUI or not.

Because the insurance companies frequently dispute the existence of a “serious injury” under this statutory exception, there have been many cases in Pennsylvania that address the controversy over this issue. As a result, the definition of a serious injury has been argued in courts throughout Pennsylvania over the past 20 years. Still, there is ongoing uncertainty about what constitutes a “serious injury” in many cases. Limited tort “serious injury

exception” cases have different outcomes in the same county and especially from one county to the next. For instance, it may be easier to prove that an injury is serious before a jury in Philadelphia, than it is to do the same before a jury in Bucks or Montgomery County.

For these reasons, it is typically very difficult for an unrepresented Pennsylvania accident victim to prove that he has sustained a “serious injury” under this limited tort exception. As a result, it is critically important that an accident victim consult with an experienced limited tort lawyer who understands these exceptions. The limited tort lawyer you consult with should make sure you understand the “serious injury” exception. The limited tort lawyer must have experience proving that their clients have sustained a “serious injury.” Finally, the Pennsylvania limited tort lawyer you contact must be able to apply the Pennsylvania “serious injury exception” to the specific facts in your case. This analysis must take into account:

- The injuries that were diagnosed;
- The length of time your accident related treatment lasted;
- The type of treatment you received;
- Any residual problems you have after improving as much as you can medically;
- Any activities of daily living that you are unable to do or that are harder for you to do;
- The different counties that you may be able to sue in.

While a good Pennsylvania limited tort lawyer is important regardless of the exception you are claiming, it is even more imperative if you are claiming that you should be entitled to pain and suffering damages because you suffered a “serious injury.”

If the evidence in your medical records and your lawyer’s arguments are convincing enough, then your Pennsylvania limited tort lawyer may be able to convince an insurance company to settle with you prior to trial. In the end, it may be necessary to present your case to a jury in order to prove that your injury is both serious and substantially impacting your life.

It is important that your lawyer always prepare your case as if it’s going to trial. This is the best strategy to properly prepare your case for settlement or trial. In order to obtain a fair settlement, the insurance company must recognize that you and your lawyer are truly committed to successfully proving that your injury or injuries will overcome the “serious injury exception” to limited tort.



# 10

## Hard to Define Injuries Under the Limited Tort Exception

Where it is not abundantly clear that an individual sustained a “serious injury” or “disfigurement,” the Pennsylvania Supreme Court has made it clear that a jury may decide whether an injury resulted in a “permanent disfigurement” or an “impairment of a bodily function.” See *Washington v. Baxter*, 719 A.2d 733 (Pa. 1998) and *Hames v. Philadelphia Housing Authority*, 737 A.2d 825 (PA 1999). The *Baxter* case established that the injured party has the right to a jury trial in all but the clearest cases and developed a standard for determining whether a serious impairment of a bodily function occurred. Specifically, the *Baxter* Court decided that two questions must be answered in determining whether an injury is a serious impairment to a bodily function.

- (1) Was a *significant* bodily function impaired because of the Pennsylvania car accident injuries?
- (2) Was the impairment serious?

In applying the *Baxter* standard, Pennsylvania courts want a jury to weigh evidence about the injuries themselves *and* about the impact of the injuries on the accident victim’s life. Medical testimony from a physician is necessary to determine the existence of a serious injury. The injury does not need to be permanent to be defined as “serious.” However, permanence is one relevant consideration for this limited tort “serious injury exception.”

Under *Baxter*, a jury may consider:

- The extent of the impairment;
- The length of time the impairment lasted;
- The medical and rehabilitation treatment required to correct or minimize the effects of the impairment;
- Any other relevant factors.

Whether an injury will be serious enough to meet the criteria of this “serious injury exception” to limited tort depends very specifically on the details of the case. What may constitute a lesser injury for one person may be a serious injury for another, depending on that person’s age, occupation, and other relevant factors.

When discussing the factors relevant to a jury’s determination of whether or not an accident victim’s injury is a “serious injury” and an exception to limited tort, it is also important to consider what a jury *cannot* consider. The jury *cannot* be instructed that the plaintiff elected the limited tort option in exchange for a lower car insurance premium, because this is misleading, prejudicial and irrelevant. See *Price v. Guy*, 735 A.2d 668 (Pa. 1999). Instead, it is the jury’s role to focus on determining whether the plaintiff suffered a “serious injury,” without any additional information about why the jury is making this determination.

The information described above may seem daunting. The “serious injury exception” to limited tort is confusing and is not consistent from county to county in Pennsylvania. It is important to know that many Pennsylvania car accident victims who are well represented by a Pennsylvania limited tort lawyer and who are covered by the limited tort option have successfully asserted their rights under this “serious injury exception” and are able to recover pain and suffering damages for their serious injuries. By consulting and retaining an experienced and knowledgeable limited tort attorney, you will better understand how the “serious injury” exception applies to your circumstance. For these reasons, the limited tort lawyer you retain must have experience proving that their clients have sustained a “serious injury” and must have a track record of success in dealing with insurance companies and juries when this issue arises.

# 11

## Statute of Limitations in Limited Tort Cases

Generally, motor vehicle accident cases and other personal injury actions have a two-year statute of limitations in Pennsylvania. **See 42 Pa. Cons. Stat. §5524(2)**. This general rule holds true for the economic damages part of a limited tort case. For example, the statute of limitations for medical expenses and lost wages generally begins on the day of the accident.

However, the two year statute of limitations may be extended for non-economic damages in limited tort cases when a person insured by limited tort sues for non-economic damages pursuant to the serious injury exception. As discussed above, what constitutes a “serious injury” and how that injury will impact your life is not always readily apparent. Thus, Pennsylvania courts have held that for purposes of the “serious injury exception” to limited tort, the statute of limitations does not begin to run until the injured party knows, or should have known, that he or she incurred a serious injury.

The potentially different effective dates for the applicable statute of limitations can create practical and legal problems. Therefore, it is important to consult with an experienced Pennsylvania limited tort attorney who can help you navigate these potential complications. You also want to make sure that your lawsuit is properly filed and served upon all defendants, within the required statute of limitations under Pennsylvania law. Failure to file your case before the expiration of the statute of limitations may preclude you from obtaining a financial recovery and bar you from bringing a claim.

# 12

## What to Do After An Accident If You Have Limited Tort

As you can tell from the information provided in this book about limited tort, you may have a lot at stake if you are covered by the limited tort option when you are injured in a Pennsylvania car crash.

Some insurance companies try to convince an accident victim covered by limited tort that they do not have the right to recover for their pain and suffering after an accident. Obviously, insurance companies would much prefer to receive premiums than pay benefits or compensation to injured victims.

Your insurance agent also has a strong financial incentive to try to convince you that you shouldn't pursue an injury claim if you have limited tort. This is because your insurance agent receives a potentially large kickback or bonus at the end of the year from the insurance companies he or she sells for. This compensation is important to your agent and is a direct result of claims paid versus premiums received by your agent's office. Therefore, this bonus goes up based on premiums paid and drops dramatically when the insurance company has to pay money related to a loss.

# 13

## Apply These Basic Limited Tort “Rules of the Road” After a Motor Vehicle Accident in Pennsylvania

By taking the time to read this book and understand how the limited tort option works in Pennsylvania, you now possess the knowledge you need to be aware of your basic rights after you’ve been injured in a motor vehicle accident. You will also understand why the insurance adjusters or your agent immediately dismiss your right to compensation and benefits. Be sure to take the following steps to ensure your fair and just recovery.

1. If you are physically able to—or if another passenger in your vehicle is physically able to—do the following at the accident scene:
  - Use a cell phone to take photos of both cars. If possible, do this at the accident scene before the vehicles are moved.
  - If any witnesses approach you at the scene, try to get their name and phone numbers. If you are physically unable to write this information down, ask them to write it down and give it to you, or if you have a recording option on your cell phone, just speak this information into your phone where it can be recorded and retrieved later.
  - Try to obtain the insurance information of the other vehicle.
  - Ask the investigating police officer for the barracks they are from and the incident report number. You can write this down or record this information on your phone if you have that option.
  - Within a day or two thereafter, write down any details you recall about how the accident occurred. If you are physically unable to do this and if your cell phone has a recording option, make an audio recording of this information.
  - As soon as you are physically able and every *other* day thereafter, take photographs of your visible injuries with the highest quality camera you have access to. Be sure and photograph lacerations and cuts, bruises, abrasions, stitches, swelling, redness, or any evidence of trauma.

2. Whether you are transported to the emergency room or not, if you are injured, it is very important to see an experienced doctor or return to the emergency room to see a physician who can properly treat and diagnose your accident-related injuries. Continue to obtain medical treatment until your injuries are resolved. Your doctor will not only help you get the medical care that you need, but may also provide important information if you seek to recover compensation for your pain and suffering. This applies whether you are full tort or limited tort.
3. Finally, it is important to consult with an experienced Pennsylvania limited tort lawyer. Limited tort is a complicated area of Pennsylvania motor vehicle accident law and the potential limitations with limited tort coverage are significant for a car accident victim. A knowledgeable limited tort attorney can provide you with a legal analysis of your case and can help you understand how best to protect your legal and financial interests after you've been hurt or sustained damages as a result of a motor vehicle accident in Pennsylvania.

(PENNSYLVANIA LIMITED TORT STATUTES CITED IN THIS BOOK)

## 75 Pa. Cons. Stat. § 1702

### § 1702. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**“Assigned Risk Plan.”** A program for the equitable apportionment of assigned risks and clean risks among insurers.

**“Automobile Insurance Policy Act.”** The act of June 5, 1968 (P.L.140, No.78), entitled “An act regulating the writing, cancellation of or refusal to renew policies of automobile insurance; and imposing powers and duties on the Insurance Commissioner therefor.”

**“Benefits”** or **“first party benefits.”** Medical benefits, income loss benefits, accidental death benefits and funeral benefits.

**“Clean risk.”** An insured or an applicant for insurance who, for the 36-month period immediately preceding the date of application or renewal date of the policy:

- (1) has not been involved in an accident as a driver, provided that, for purposes of this paragraph, an “accident” shall not include accidents described in section 3 of the Automobile Insurance Policy Act or section 1799.3 (relating to limit on cancellations, refusals to renew, refusals to write, surcharges, rate penalties and point assignments);
- (2) has not received more than three points for violations as set forth in Chapter 15 (relating to licensing of drivers); and
- (3) whose operator’s license has not been suspended or revoked except under section 1533 (relating to suspension of operating privilege for failure to respond to citation) and the insured is able to produce proof that he or she has responded to all citations and paid all fines and penalties imposed under that section and provided further that the named insured has been a licensed operator in Pennsylvania or another state for the immediately preceding three years.

**“Commissioner.”** The Insurance Commissioner of the Commonwealth.

**“Department.”** The Department of Transportation or Insurance Department, as applicable.

**“Financial responsibility.”** The ability to respond in damages for liability on account of accidents arising out of the maintenance or use of a motor vehicle in the amount of \$15,000 because of injury to one person in any one accident, in the amount of \$30,000 because of injury to two or more persons in any one accident and in the amount of \$5,000 because of damage to property of others in any one accident. The financial responsibility shall be in a form acceptable to the Department of Transportation.

**“Injury.”** Accidentally sustained bodily harm to an individual and that individual’s illness, disease or death resulting therefrom.

**“Insured.”** Any of the following:

- (1) An individual identified by name as an insured in a policy of motor vehicle liability insurance.
- (2) If residing in the household of the named insured:
  - (i) a spouse or other relative of the named insured; or
  - (ii) a minor in the custody of either the named insured or relative of the named insured.

**“Insurer”** or **“insurance company.”** A motor vehicle liability insurer subject to the requirements of this chapter.

**“Necessary medical treatment and rehabilitative services.”** Treatment, accommodations, products or services which are determined to be necessary by a licensed health care provider unless they shall have been found or determined to be unnecessary by a State-approved Peer Review Organization (PRO).

**“Noneconomic loss.”** Pain and suffering and other nonmonetary detriment.

**“Peer Review Organization”** or **“PRO.”** Any Peer Review Organization with which the Federal Health Care Financing Administration or the Commonwealth contracts for medical review of Medicare or medical assistance services, or any health care review company, approved by the commissioner, that engages in peer review for the purpose of determining that medical and rehabilitation services are medically necessary and economically provided. The membership of any PRO utilized in connection with this chapter shall include representation from the profession whose services are subject to the review.

**“Private passenger motor vehicle.”** A four-wheel motor vehicle, except recreational vehicles not intended for highway use, which is insured by a natural person and:



- (1) is a passenger car neither used as a public or livery conveyance nor rented to others; or
- (2) has a gross weight not exceeding 9,000 pounds and is not principally used for commercial purposes other than farming.

The term does not include any motor vehicle insured exclusively under a policy covering garage, automobile sales agency repair shop, service station or public parking place operation hazards.

**“Self-insurer.”** An entity providing benefits and qualified in the manner set forth in section 1787 (relating to self-insurance).

**“Serious injury.”** A personal injury resulting in death, serious impairment of body function or permanent serious disfigurement.

**“Underinsured motor vehicle.”** A motor vehicle for which the limits of available liability insurance and self-insurance are insufficient to pay losses and damages.

**“Uninsured motor vehicle.”** Any of the following:

- (1) A motor vehicle for which there is no liability insurance or self-insurance applicable at the time of the accident.
- (2) A motor vehicle for which the insurance company denies coverage or the insurance company is or becomes involved in insolvency proceedings in any jurisdiction.
- (3) An unidentified motor vehicle that causes an accident resulting in injury provided the accident is reported to the police or proper governmental authority and the claimant notifies his insurer within 30 days, or as soon as practicable thereafter, that the claimant or his legal representative has a legal action arising out of the accident.

**“Voluntary rate.”** An insurer’s rating plan approved by the commissioner. In the case of an insurer with multiple rating plans, the voluntary rate shall be that rating plan applicable to the risk.

(Feb. 12, 1984, P.L.53, No.12, eff. Oct. 1, 1984; Feb. 7, 1990, P.L.11, No.6, eff. imd.)

## 75 Pa. Cons. Stat. § 1705(a)

### § 1705. Election of tort options.

#### (a) Financial responsibility requirements.--

(1) Each insurer, not less than 45 days prior to the first renewal of a private passenger motor vehicle liability insurance policy on and after July 1, 1990, shall notify in writing each named insured of the availability of two alternatives of full tort insurance and limited tort insurance described in subsections (c) and (d). The notice shall be a standardized form adopted by the commissioner and shall include the following language:

#### NOTICE TO NAMED INSUREDS

Additional coverages under this option are available at additional cost.

Additional coverages under this option are available at additional cost.

C. You may contact your insurance agent, broker or company to discuss the cost of other coverages.

D. If you wish to choose the “limited tort” option described in paragraph A, you must sign this notice where indicated below and return it. If you do not sign and return this notice, you will be considered to have chosen the “full tort” coverage as described in paragraph B and you will be charged the “full tort” premium.

I wish to choose the “limited tort” option described in paragraph A:

Named Insured	Date

E. If you wish to choose the “full tort” option described in paragraph B, you may sign this notice where indicated below and return it. However, if you do not sign and return this notice, you will be considered to have chosen the “full tort” coverage as described in paragraph B and you will be charged the “full tort” premium.

I wish to choose the “full tort” option described in paragraph B:

Named Insured	Date

(2) Insurers shall print the above notice containing both options on one sheet in prominent type and place in a prominent location. Any person signing, or otherwise bound by, a document containing such terms is bound

by such election and is precluded from claiming liability of any person based upon being inadequately informed in making the election between full tort or limited tort alternatives. Where there are two or more named insureds on a policy, any named insured may make the full or limited tort election provided for in this section for all named insureds on the policy.

(3) If a named insured who receives a notice under paragraph (1) does not indicate a choice within 20 days, the insurer shall send a second notice. The second notice shall be in a form identical to the first notice, except that it shall be identified as a second and final notice. If a named insured has not responded to either notice ten days prior to the renewal date, the named insured and those he is empowered by this section to bind by his choice are conclusively presumed to have chosen the full tort alternative. All notices required by this section shall advise that if no tort election is made, the named insured and those he is empowered to bind by his choice are conclusively presumed to have chosen the full tort alternative. Any person subject to the limited tort option by virtue of this section shall be precluded from claiming liability of any person based upon being inadequately informed.

(4) Each insurer, prior to the first issuance of a private passenger motor vehicle liability insurance policy on and after July 1, 1990, shall provide each applicant with the notice required by paragraph (1). A policy may not be issued until the applicant has been provided an opportunity to elect a tort option.

(5) An owner of a currently registered private passenger motor vehicle who does not have financial responsibility shall be deemed to have chosen the limited tort alternative.

(6) Nothing in this section changes or modifies the existing requirement that owners of registered vehicles maintain bodily injury and property damage liability insurance arising out of the ownership, maintenance or use of a motor vehicle.

## 75 Pa. Cons. Stat. § 1705(b)

### **(b) Application of tort options.--**

(1) The tort option elected by a named insured shall apply to all private passenger motor vehicle policies of the named insured issued by the same insurer and shall continue in force as to all subsequent renewal policies, replacement policies and any other private passenger motor vehicle policies under which the individual is a named insured until the insurer, or its authorized representative, receives a properly executed form electing the other tort option.

(2) The tort option elected by a named insured shall apply to all insureds under the private passenger motor vehicle policy who are not named insureds under another private passenger motor vehicle policy. In the case where more than one private passenger motor vehicle policy is applicable to an insured and the policies have conflicting tort options, the insured is bound by the tort option of the policy associated with the private passenger motor vehicle in which the insured is an occupant at the time of the accident if he is an insured on that policy and bound by the full tort option otherwise.

(3) An individual who is not an owner of a currently registered private passenger motor vehicle and who is not a named insured or insured under any private passenger motor vehicle policy shall not be precluded from maintaining an action for noneconomic loss or economic loss sustained in a motor vehicle accident as the consequence of the fault of another person pursuant to applicable tort law.

## 75 Pa. Cons. Stat. § 1705(c)

### **(c) Full tort alternative.--**

Each person who is bound by the full tort election remains eligible to seek compensation for noneconomic loss claimed and economic loss sustained in a motor vehicle accident as the consequence of the fault of another person pursuant to applicable tort law.

## 75 Pa. Cons. Stat. § 1705(d)

### **(d) Limited tort alternative.--**

Each person who elects the limited tort alternative remains eligible to seek compensation for economic loss sustained in a motor vehicle accident as the consequence of the fault of another person pursuant to applicable tort law. Unless the injury sustained is a serious injury, each person who is bound by the limited tort election shall be precluded from maintaining an action for any noneconomic loss, except that:

(1) An individual otherwise bound by the limited tort election who sustains damages in a motor vehicle accident as the consequence of the fault of another person may recover damages as if the individual damaged had elected the full tort alternative whenever the person at fault:

- (i) is convicted or accepts Accelerated Rehabilitative Disposition (ARD) for driving under the influence of alcohol or a controlled substance in that accident;
- (ii) is operating a motor vehicle registered in another state;
- (iii) intends to injure himself or another person, provided that an individual does not intentionally injure himself or another person merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person; or
- (iv) has not maintained financial responsibility as required by this chapter, provided that nothing in this paragraph shall affect the limitation of section 1731(d)(2) (relating to availability, scope and amount of coverage).

(2) An individual otherwise bound by the limited tort election shall retain full tort rights with respect to claims against a person in the business of designing, manufacturing, repairing, servicing or otherwise maintaining motor vehicles arising out of a defect in such motor vehicle which is caused by or not corrected by an act or omission in the course of such business, other than a defect in a motor vehicle which is operated by such business.

(3) An individual otherwise bound by the limited tort election shall retain full tort rights if injured while an occupant of a motor vehicle other than a private passenger motor vehicle.

## 75 Pa. Cons. Stat. § 1711

### § 1711. Required benefits.

#### (a) Medical benefit.--

An insurer issuing or delivering liability insurance policies covering any motor vehicle of the type required to be registered under this title, except recreational vehicles not intended for highway use, motorcycles, motor-driven cycles or motorized pedalcycles or like type vehicles, registered and operated in this Commonwealth, shall include coverage providing a medical benefit in the amount of \$5,000.

#### (b) Minimum policy.--

All insurers subject to this chapter shall make available for purchase a motor vehicle insurance policy which contains only the minimum requirements of financial responsibility and medical benefits as provided for in this chapter.

(Feb. 12, 1984, P.L.53, No.12, eff. Oct. 1, 1984; Apr. 26, 1989, P.L.13, No.4, eff. June 1, 1989; Feb. 7, 1990, P.L.11, No.6, eff. July 1, 1990)

## 75 Pa. Cons. Stat. § 1712(I)

### **§ 1712. Availability of benefits.**

An insurer issuing or delivering liability insurance policies covering any motor vehicle of the type required to be registered under this title, except recreational vehicles not intended for highway use, motorcycles, motor-driven cycles or motorized pedalcycles or like type vehicles, registered and operated in this Commonwealth, shall make available for purchase first party benefits with respect to injury arising out of the maintenance or use of a motor vehicle as follows:

#### **(1) Medical benefit.--**

Subject to the limitations of section 1797 (relating to customary charges for treatment), coverage to provide for reasonable and necessary medical treatment and rehabilitative services, including, but not limited to, hospital, dental, surgical, psychiatric, psychological, osteopathic, ambulance, chiropractic, licensed physical therapy, nursing services, vocational rehabilitation and occupational therapy, speech pathology and audiology, optometric services, medications, medical supplies and prosthetic devices, all without limitation as to time, provided that, within 18 months from the date of the accident causing injury, it is ascertainable with reasonable medical probability that further expenses may be incurred as a result of the injury. Benefits under this paragraph may include any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

#### **(2) Income loss benefit.--**

Includes the following:

- (i) Eighty percent of actual loss of gross income.
- (ii) Reasonable expenses actually incurred for hiring a substitute to perform self-employment services thereby mitigating loss of gross income or for hiring special help thereby enabling a person to work and mitigate loss of gross income.

Income loss does not include loss of expected income for any period following the death of an individual or expenses incurred for services performed following the death of an individual. Income loss shall not commence until five working days have been lost after the date of the accident.

**(3) Accidental death benefit.--**

A death benefit paid to the personal representative of the insured, should injury resulting from a motor vehicle accident cause death within 24 months from the date of the accident.

**(4) Funeral benefit.--**

Expenses directly related to the funeral, burial, cremation or other form of disposition of the remains of a deceased individual, incurred as a result of the death of the individual as a result of the accident and within 24 months from the date of the accident.

**(5) Combination benefit.--**

A combination of benefits described in paragraphs (1) through (4) as an alternative to the separate purchase of those benefits.

**(6) Extraordinary medical benefits.--**

Medical benefits, as defined in paragraph (1), which exceed \$100,000. (Feb. 12, 1984, P.L.53, No.12, eff. Oct. 1, 1984; Feb. 7, 1990, P.L.11, No.6, eff. July 1, 1990; Oct. 4, 2002, P.L.845, No.123, eff. 60 days; Dec. 23, 2002, P.L.1982, No.229, eff. Dec. 3, 2002)



## 75 Pa. Cons. Stat. § 1731

### § 1731. Availability, scope and amount of coverage.

#### (a) Mandatory offering.--

No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are offered therein or supplemental thereto in amounts as provided in section 1734 (relating to request for lower limits of coverage). Purchase of uninsured motorist and underinsured motorist coverages is optional.

#### (b) Uninsured motorist coverage.--

Uninsured motorist coverage shall provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages therefor from owners or operators of uninsured motor vehicles. The named insured shall be informed that he may reject uninsured motorist coverage by signing the following written rejection form:

#### REJECTION OF UNINSURED MOTORIST PROTECTION

By signing this waiver I am rejecting uninsured motorist coverage under this policy, for myself and all relatives residing in my household. Uninsured coverage protects me and relatives living in my household for losses and damages suffered if injury is caused by the negligence of a driver who does not have any insurance to pay for losses and damages. I knowingly and voluntarily reject this coverage.

	Signature of First Named Insured
	Date

#### (b.1) Limitation of rejection.--

Uninsured motorist protection may be rejected for the driver and passengers for rental or lease vehicles which are not otherwise common carriers by motor vehicle, but such coverage may only be rejected if the rental or lease agreement is signed by the person renting or leasing the vehicle and contains the following rejection language:

Rejection of Uninsured Motorist Protection

I am rejecting uninsured motorist coverage under this rental or lease agreement, and any policy of insurance or self-insurance issued under this agreement, for myself and all other passengers of this vehicle. Uninsured coverage protects me and other passengers in this vehicle for losses and damages suffered if injury is caused by the negligence of a driver who does not have any insurance to pay for losses and damages.

**(b.2) Rejection language change.--**

The rejection language of subsection (b.1) may only be changed grammatically to reflect a difference in tense in the rental agreement or lease agreement.

**(b.3) Vehicle rental services.--**

The requirements of subsection (b.1) may be met in connection with an expedited vehicle rental service, which service by agreement of the renter does not require the renter’s signature for each rental, if a master enrollment or rental agreement contains the rejection language of subsection (b.1) and such agreement is signed by the renter.

**(c) Underinsured motorist coverage.--**

Underinsured motorist coverage shall provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages therefor from owners or operators of underinsured motor vehicles. The named insured shall be informed that he may reject underinsured motorist coverage by signing the following written rejection form:

REJECTION OF UNDERINSURED MOTORIST PROTECTION

By signing this waiver I am rejecting underinsured motorist coverage under this policy, for myself and all relatives residing in my household. Underinsured coverage protects me and relatives living in my household for losses and damages suffered if injury is caused by the negligence of a driver who does not have enough insurance to pay for all losses and damages. I knowingly and voluntarily reject this coverage.

	Signature of First Named Insured
	Date

**(c.1) Form of waiver.**--Insurers shall print the rejection forms required by subsections (b) and (c) on separate sheets in prominent type and location. The forms must be signed by the first named insured and dated to be valid. The signatures on the forms may be witnessed by an insurance agent or broker. Any rejection form that does not specifically comply with this section is void. If the insurer fails to produce a valid rejection form, uninsured or underinsured coverage, or both, as the case may be, under that policy shall be equal to the bodily injury liability limits. On policies in which either uninsured or underinsured coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. Any person who executes a waiver under subsection (b) or (c) shall be precluded from claiming liability of any person based upon inadequate information.

**(d) Limitation on recovery.**--

- (1) A person who recovers damages under uninsured motorist coverage or coverages cannot recover damages under underinsured motorist coverage or coverages for the same accident.
- (2) A person precluded from maintaining an action for noneconomic damages under section 1705 (relating to election of tort options) may not recover from uninsured motorist coverage or underinsured motorist coverage for noneconomic damages.

(Feb. 12, 1984, P.L.53, No.12, eff. Oct. 1, 1984; Feb. 7, 1990, P.L.11, No.6, eff. July 1, 1990; Dec. 28, 1994, P.L.1441, No.170, eff. 60 days; Dec. 28, 1994, P.L.1450, No.172, eff. 60 days; July 6, 1995, P.L.246, No.30, eff. 60 days)

**1995 Amendment.** Act 30 amended subsec. (b.1) and added subsecs. (b.2) and (b.3), retroactive to December 28, 1994, as to subsec. (b.1).

## 75 Pa. Cons. Stat. § 3802

### § 3802. Driving under influence of alcohol or controlled substance. (“DUI”)

#### (a) General impairment.--

- (1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.
- (2) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

#### (b) High rate of alcohol.--

An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

#### (c) Highest rate of alcohol.--

An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

#### (d) Controlled substances.--

An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:

- (1) There is in the individual’s blood any amount of a:
  - (i) Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act;

- (ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or
  - (iii) metabolite of a substance under subparagraph (i) or (ii).
- (2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.
  - (3) The individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.
  - (4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. § 7303 (relating to sale or illegal use of certain solvents and noxious substances).

**(e) Minors.--**

A minor may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is 0.02% or higher within two hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle.

**(f) Commercial or school vehicles.--**

An individual may not drive, operate or be in actual physical control of the movement of a commercial vehicle, school bus or school vehicle in any of the following circumstances:

- (1) After the individual has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:
  - (i) 0.04% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle other than a school bus or a school vehicle.
  - (ii) 0.02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or a school vehicle.
- (2) After the individual has imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

- (3) While the individual is under the influence of a controlled substance or combination of controlled substances, as defined in section 1603 (relating to definitions).
  - (4) While the individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances, as defined in section 1603.
    - (g) Exception to two-hour rule.--Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:
      - (1) where the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within two hours; and
      - (2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.
- (May 11, 2006, P.L.155, No.36, eff. imd.)

2006 Amendment. Act 36 amended subsec. (g)(1). See the preamble to Act 36 in the appendix to this title for special provisions relating to legislative intent.

## 75 Pa. Cons. Stat. § 3807

### § 3807. Accelerated Rehabilitative Disposition. (“ARD”)

#### (a) Eligibility.--

(1) Except as set forth in paragraph (2), a defendant charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) may be considered by the attorney for the Commonwealth for participation in an Accelerated Rehabilitative Disposition program in a county if the program includes the minimum requirements contained in this section.

(2) The attorney for the Commonwealth shall not submit a charge brought under this chapter for Accelerated Rehabilitative Disposition if any of the following apply:

- (i) The defendant has been found guilty of or accepted Accelerated Rehabilitative Disposition of a charge brought under section 3802 within ten years of the date of the current offense unless the charge was for an ungraded misdemeanor under section 3802(a)(2) and was the defendant’s first offense under section 3802.
- (ii) An accident occurred in connection with the events surrounding the current offense and an individual other than the defendant was killed or suffered serious bodily injury as a result of the accident.
- (iii) There was a passenger under 14 years of age in the motor vehicle the defendant was operating.

#### (b) Evaluation and treatment.--

(1) A defendant offered Accelerated Rehabilitative Disposition for a violation of section 3802 is, as a condition of participation in the program, subject to the following requirements in addition to any other conditions of participation imposed by the court:

- (i) The defendant must attend and successfully complete an alcohol highway safety school established under section 1549 (relating to establishment of schools). A participating defendant shall be given both oral and written notice of the provisions of section 1543(b) (relating to driving while operating privilege is suspended or revoked).
- (ii) Prior to receiving Accelerated Rehabilitative Disposition or other preliminary disposition, the defendant must be evaluated under

section 3816(a) (relating to requirements for driving under influence offenders) to determine the extent of the defendant's involvement with alcohol or other drug and to assist the court in determining what conditions of Accelerated Rehabilitative Disposition would benefit the defendant and the public. If the evaluation indicates there is a need for counseling or treatment, the defendant shall be subject to a full assessment for alcohol and drug addiction in accordance with the provisions of section 3814(3) and (4) (relating to drug and alcohol assessments).

- (iii) If the defendant is assessed under subparagraph (ii) to be in need of treatment, the defendant must participate and cooperate with a licensed alcohol or drug addiction treatment program. The level and duration of treatment shall be in accordance with the recommendations of the full assessment. Nothing in this subparagraph shall prevent a treatment program from refusing to accept a defendant if the program administrator deems the defendant to be inappropriate for admission to the program. A treatment program shall retain the right to immediately discharge into the custody of the probation officer an offender who fails to comply with program rules and treatment expectations or refuses to constructively engage in the treatment process.
- (iv) The defendant must remain subject to court supervision for at least six months, but not more than 12 months.
- (v) The defendant must make restitution to any person that incurred determinable financial loss as a result of the defendant's actions which resulted in the offense. Restitution must be subject to court supervision.
- (vi) The defendant must pay the reasonable costs of a municipal corporation in connection with the offense. Fees imposed under this subparagraph shall be distributed to the affected municipal corporation.
- (vii) The defendant must pay any other fee, surcharge or cost required by law. Except as set forth in subparagraph (vi), (viii) or (ix), a fee or financial condition imposed by a judge as a condition of Accelerated Rehabilitative Disposition or any other preliminary disposition of any charge under this chapter shall be distributed as provided for in 42 Pa.C.S. §§ 3571 (relating to Commonwealth portion of fines, etc.) and 3573 (relating to municipal corporation portion of fines, etc.).



- (viii) The defendant must pay the costs of compliance with subparagraphs (i), (ii) and (iii).
  - (ix) The defendant shall pay a cost of \$25 which shall be forwarded to the State Treasurer for deposit in the Emergency Medical Services Operating Fund.
  - (2) The defendant shall be subject to a full assessment for alcohol and drug addiction if any of the following apply:
    - (i) The evaluation under paragraph (1)(ii) indicates a likelihood that the defendant is addicted to alcohol or other drugs.
    - (ii) The defendant's blood alcohol content at the time of the offense was at least 0.16%.
  - (3) The assessment under paragraph (2) shall be conducted by one of the following:
    - (i) The Department of Health or its designee.
    - (ii) The county agency with responsibility for county drug and alcohol programs or its designee.
    - (iii) The clinical personnel of a facility licensed by the Department of Health for the conduct of drug and alcohol addiction treatment programs.
  - (4) The assessment under paragraph (2) shall consider issues of public safety and shall include recommendations for all of the following:
    - (i) Length of stay.
    - (ii) Levels of care.
    - (iii) Follow-up care and monitoring.
- (c) Insurance.--**
- (1) This subsection shall only apply to a health insurance, health maintenance organization or other health plan required to provide benefits under section 602-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.
  - (2) If an individual who is insured by a health insurance, a health maintenance organization or other health plan, that is doing business in this Commonwealth, the individual may not be deprived of alcohol and other drug abuse and addiction treatment or coverage within the scope of that plan due to the identification of an alcohol or other drug problem which occurs as a result of an assessment under this section.

**(d) Mandatory suspension of operating privileges.--**

As a condition of participation in an Accelerated Rehabilitative Disposition program, the court shall order the defendant's license suspended as follows:

- (1) There shall be no license suspension if the defendant's blood alcohol concentration at the time of testing was less than 0.10%.
- (2) For 30 days if the defendant's blood alcohol concentration at the time of testing was at least 0.10% but less than 0.16%.
- (3) For 60 days if:
  - (i) the defendant's blood alcohol concentration at the time of testing was 0.16% or higher;
  - (ii) the defendant's blood alcohol concentration is not known;
  - (iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with the events surrounding the current offense; or
  - (iv) the defendant was charged pursuant to section 3802(d).
- (4) For 90 days if the defendant was a minor at the time of the offense.

**(e) Failure to comply.--**

(1) A defendant who fails to complete any of the conditions of participation contained in this section shall be deemed to have unsuccessfully participated in an Accelerated Rehabilitative Disposition program, and the criminal record underlying participation in the program shall not be expunged.

(2) The court shall direct the attorney for the Commonwealth to proceed on the charges as prescribed in the Rules of Criminal Procedure if the defendant:

- (i) fails to meet any of the requirements of this section;
  - (ii) is charged with or commits an offense under 18 Pa.C.S. (relating to crimes and offenses); or
  - (iii) violates any other condition imposed by the court.
- (Nov. 29, 2004, P.L.1369, No.177, eff. imd.; Aug. 18, 2009, P.L.308, No.37, eff. 180 days)

**2009 Amendment.** Act 37 amended subsec. (b)(1)(vii) and added (ix).

**2004 Amendment.** Act 177 amended subsecs. (b)(1)(iv) and (d).

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## About Jon Ostroff, Esquire



Jon Ostroff is the founder and lead attorney for Ostroff Injury Law in Plymouth Meeting, Pennsylvania. For the past quarter century, Mr. Ostroff has been at the forefront of fighting on behalf of injured clients throughout Pennsylvania.

Over the past 25 years, Mr. Ostroff and his talented, experienced team has achieved an admirable record by helping over 20,000 Pennsylvania accident victims. He has helped his many clients by obtaining significant compensation through settlements, litigation, arbitration awards and jury verdicts. His peers in the legal community have awarded him the coveted Martindale-

Hubbell “AV” rating in recognition of his high ethical standards and skill as an attorney.

Despite the awards and honors he has received, Mr. Ostroff’s motivation as a trial lawyer remains the same as the day he was awarded his law degree: the prospect of facilitating a major impact and positive change for his injured clients. Jon has worked tirelessly to preserve the rights of accident victims across Pennsylvania. Jon has frequently been recognized for his charitable work and volunteer efforts in his local community, across Pennsylvania, nationally and internationally.

In this book, Jon takes an obscure and difficult area of insurance law and explains in clear and direct language how the limited tort law can affect the rights of Pennsylvania accident victims. Shouldering the expense of producing this book is just another way that Jon Ostroff shows his commitment to the value of greater public understanding of this important area of law.

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