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Injured Motorcyclists



# MICHIGAN MOTORCYCLE LAW EXPLAINED

THE EBOOK

**JASON A. WAECHTER**  
THE MOTORCYCLE LAWYER<sup>SM</sup>

*Caveat: This eBook is not a complete guide to the law. The No-Fault Law changes when new laws are passed and/or when the appellate courts decide cases that change the law. Because the law is constantly changing, you should contact our office, so the particular facts of your case are applied to the most current law for accurate legal advice.*



# ABOUT

JASON A. WAECHTER

THE MOTORCYCLE LAWYER<sup>SM</sup>



**Attorney Jason A. Waechter** is a Michigan attorney specializing in motorcycle injury and wrongful death litigation for 25 years.

Mr. Waechter is a million-dollar winning attorney, with over \$75,000,000 paid to his clients and has won many verdicts across the state. A few include \$2,000,000 St. Clair County, \$677,000 Washtenaw County, \$350,000 Clair County, and a recent \$550,000 Oakland County verdict.

Some honors include:

- Chosen as a **Super Lawyer®**
- Member of the *Million Dollar Advocates Forum*
- Rated a **Top 100 Trial Lawyer**, by *National Trial Lawyers*
- *US News & World Report's* Best Personal Injury Firms

Mr. Waechter furthers legal issues relating to his clients and cases. His firm's accident prevention campaign includes billboards and bumper stickers reminding other drivers to keep a look out and share the road. His sponsored Bystander Assistance Class has patched over 2,500 motorcyclists teaching them basic first aid and accident scene management.

Mr. Waechter is a member of American Bikers Aiming Toward Education (ABATE) and the American Motorcycle Association (AMA). Some say Jason "Wrote the book"—he has authored: "Litigating Motorcycle Injury & Wrongful Death Cases," a book for personal injury attorneys.

Attorney Waechter has written almost 100 articles on motorcycling, insurance and motorcycle law for his monthly columns in Thunder Roads Magazine and Midwest Motorcyclist.

For free advice after a crash or for possible representation, call Attorney Jason Waechter.

Toll free: 1-877-BIKER LAW (that's 1-877-245-3752) or (248) 355-4701. He will speak to you personally.

*Offices: Southfield, Detroit, Flint, Grand Rapids, Marquette, Ann Arbor & Lansing*



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## WHY DID I WRITE THIS EBOOK?

There is so much misinformation and misunderstanding about Michigan's laws that apply to motorcycles and motorcyclists. I often see bikers get shafted because of this. I want to set the record straight and advise motorcyclists on how to protect themselves under the law.

### ACCOLADES AND ACHIEVEMENTS



Selected to Super Lawyers as a Top Rated Personal Injury Attorney every year since 2011. Super Lawyers is a rating service of outstanding lawyers who have attained a high-degree of peer recognition and professional achievement.



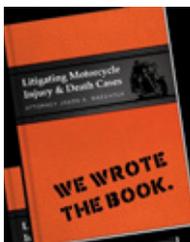
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We have earned the highest attorney rating (5.0 Stars) from the oldest and foremost legal source. Martindale-Hubbell publishes the Martindale-Hubbell Law Directory, which provides background information and rates lawyers across the country. It is the oldest and most distinguished attorney rating system. It rates lawyers on legal ability and high ethical standards.



Jason Waechter literally wrote THE book: Litigation Motorcycle Injury & Death Cases. It is a comprehensive guide for personal injury lawyers handling motorcycle accident cases. Includes chapters on information such as insurance claims, types of injuries and litigation tactics.



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## IN A NUTSHELL: BEST ADVICE FOR A MICHIGAN MOTORCYCLIST

- 1. Have health insurance.** Motorcycle wrecks can come with many medical bills. Depending on how the crash occurs, an auto/No-Fault insurance policy may not have to pay them. You will be stuck with them unless you have health insurance.
- 2. Insure your bike.** It's the law, but more importantly if you do not, you are not entitled to No-Fault benefits which include payment of all medical bills, house chores, medical transportation and wage loss benefits (in crashes that 'involve' a car, truck or van).\*
- 3. Have Uninsured and Underinsured motorist insurance coverage on your bike (and other vehicles).** This valuable insurance coverage pays YOU if the negligent driver who hit you does not have insurance or enough insurance. This is fully explained later.
- 4. After any crash, speak to a specializing attorney who has extensive experience litigating motorcycle injury accidents. Call me; I will personally apply the specific facts of your situation to the current law. I've handled over one thousand motorcycle cases.** Your rights and ability to recover depend on the specific facts of the accident, who owned the bike, and what kind of insurance covers all involved. I've read letters from "personal injury" lawyers who say they do motorcycle crash cases, but advised the injured motorcyclist incorrectly.



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## TYPICAL CLAIMS

### MICHIGAN MOTORCYCLISTS MAY HAVE

**I. No-Fault Claim: No-Fault Benefits** are payable to anyone who suffers an injury “arising out” of the ownership, operation, maintenance or use of a “motor vehicle” as a motor vehicle. Even if the accident was your fault you may be entitled to **No-Fault benefits**. The **No-Fault benefits** include:

**A. Allowable medical expenses** paid for life;

- i. Reasonably necessary for the victim’s care, recovery or rehabilitation;
- ii. Reasonable in amount; and
- iii. Actually incurred (services already provided\*).

Attendant care is also part of allowable medical expenses. It is where an individual or company is paid by the hour to care for the patient. We have had family members paid \$200 per day for care giving.

**B. Wage loss.** There is a monthly maximum, presently about \$5,400 for up to three years;

**C. Medical mileage:** Expenses for travel to and from doctors. This can be mileage reimbursement or the payment of a driving service.\*

**D. Replacement services:** Payment of household chores of up to \$20.00 per day for chores the injured motorcyclist did before the crash that he or she cannot do now because of the injuries from the crash.

**II. INJURY CLAIM:** Is the claim against the negligent driver/owner or other entity responsible for the accident. This claim seeks compensation for pain and suffering, disfigurement, excess wage loss or other applicable damages.

**III. Collision Claim:** The claim to fix or pay the replacement value of your motorcycle less the deductible you chose. You must have collision cover included as part of your insurance policy. You chose this coverage. In most cases without it, you will not be able to collect for the damage to your motorcycle.



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## MOTORCYCLE INSURANCE WITHOUT IT, YOU'RE F@CKED!

I purposely use the profanity to get your attention—it is that important. Why do I advise you to “**Insure your bike?**” It’s the law, and if you do not you can get a ticket. However, much more importantly, **if you are the operator and owner of the uninsured motorcycle, you are not entitled to No-Fault benefits which includes payment of all medical bills for life**, medical transportation, up to 3 years for house chores and up to 3 years of wage loss\*.

I’ve talked to many bikers that are personally stuck with over \$100,000 worth of medical bills that would have been paid if they just had the basic 20/40 bodily injury coverage that makes them legal.

Another horrible fact: If you do not insure your motorcycle, a police officer can impound it. There are a few cops that are known for doing this. Again, all you need to have is the basic, cheapest PLPD policy to be legal and qualify for No-Fault benefits.



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## THE TOP 9 WAYS MICHIGAN MOTORCYCLISTS GET SHAFTED

1. Uninsured owner-operators of motorcycles do not get No-fault benefits. Insure your motorcycle. If you do not insure your motorcycle, you don't get all your medical bills paid for life, nor your other No-fault benefits.
2. Bikers cannot get their deductibles paid by the at-fault driver or his insurance company\*. "Mini Tort" does not apply to motorcycles like it does for other vehicles.
3. Motorcyclists are not entitled to No-fault benefits in some crashes. A 'motor vehicle' (car, truck, van, etc.) must be 'involved' in your crash. Wrecks because of loose gravel, pot holes, animals, going wide/off road, or with other motorcycles are all examples where No-fault benefits will not be paid.
4. Accessories and custom work on bike, often is not covered on your policy. Many are out thousands of dollars after a bike is totaled because their policy only paid the fair market value of a 'stock motorcycle.'
5. Juror prejudice: Often people that do not ride have a bias against motorcyclists. They think getting injured in a wreck 'comes with the territory' or that all motorcyclists are outlaws who ride 'crazy.' These prejudices can adversely affect a claim.
6. I thought I had "Full Coverage." Truth: There is no definition of "full coverage" under the law. You must specify what coverage you want on your motorcycle. We receive many calls where the biker says, "I asked for full coverage" but they did not end up getting uninsured motorist coverage or underinsured motorist coverage that they ultimately ended up needing.
7. Bad/wrong advice given: A lawyer or adjuster said I'm not entitled to No-fault benefits because there was no contact with a motor vehicle\*. Truth: All that is needed is 'involvement', not contact.
8. They said I had 3 years to file a lawsuit, but now the insurance company does not have to pay my medical bills! Truth: You have 3 years to sue for your injury, but only 1 year on any No-fault benefit like medical bills.
9. Motorcyclists are treated the same way as Michigan car owners in respect to the Michigan Catastrophic Claims Association (MCCA). They're both assessed \$192 to fund it. Motorcyclists get shorted by having to pay this same \$192 assessment even though many times motorcyclists aren't entitled to no-fault benefits after a crash.



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# RECOMMENDED MOTORCYCLE INSURANCE

As an attorney who has been involved in over 1,000 motorcycle crashes, claims and lawsuits, I recommend the following insurance for Michigan motorcycle owners:

- **Bodily Injury Coverage:** You must have this type of coverage to be legal. We recommend at least \$100,000 of bodily injury coverage. However, only a 20/40 policy is required. This protects you and pays for injuries of another if you were negligent. With motorcycles, it usually applies to your passenger.
- **Uninsured Motorist Coverage:** You may still be able to recover compensation for your injuries even if the other vehicle and driver are uninsured. This pays you for your pain and suffering when the negligent driver has no insurance. This may be true even if you can't identify the other driver—for example in a hit-run incident. To recover in these situations, you must have uninsured motorist coverage. Physical contact between the vehicle is often required. We recommend at least \$100,000, the more the better because this directly benefits you.
- **Underinsured Motorist Coverage:** If a negligent driver/owner causes an accident and has a small insurance policy that does not adequately compensate you for your injuries (if he or she is UNDER-insured) then you may obtain additional money for your pain and suffering from your own insurance company if you have Underinsured Motorist Coverage. We recommend at least \$100,000.00. The more the better because this allows the injured Michigan motorcyclist to collect more for his/her injuries. (WARNING: If you settle with one insurance company, it could compromise your ability to collect from another including the underinsured motorist coverage of No-Fault benefits. Call us first.)
- **Collision Coverage:** This is up to you if you wish to have it or not. Michigan law does not allow for the recovery of your vehicle (car, truck or motorcycle) damage. Do not 'just get PLPD' thinking you can make the other guy pay; you can't\*. You must decide if your motorcycle is worth replacing or fixing. The law is even worse for motorcycles. You cannot make the at-fault driver even pay your deductible, so chose you deductible amount as if it will never be returned to you in the event of a loss\*.
- **Medical Coverage:** This is additional coverage that you can purchase. If you have health insurance that does not exclude motorcycle injuries it is not necessary in my opinion. If you ride without a helmet, you must have at least \$20,000 of First Party Medical Coverage to be legal.
- **Custom Work/Accessories Coverage:** Most basic collision policies for Michigan motorcycles only cover a stock bike and maybe \$1,000 worth of extras. If you have customized your motorcycle, you may want to purchase an Accessories Insurance Rider. Ask your agent if any accessories or customizations comes with your standard Michigan motorcycle policy then decide if you need more.



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## MICHIGAN'S HELMET LAW

Presently, Michigan law allows a motorcycle rider the choice to wear a helmet or not. This law, like other laws that apply to motorcycles, is surrounded by a great deal of misinformation and misunderstanding. The following will set the record straight.

**Motorcycle operators** may ride without a helmet provided they meet the following criteria:

- 21 years of age or older, **AND**
- Have at least \$20,000 of "**first-party medical benefits**" coverage, **AND**
- Have had a motorcycle endorsement for more than two years **OR** earned a motorcycle endorsement by passing an accredited or certified motorcycle safety course.

A **passenger** on a motorcycle may ride helmet-less under the new law if:

- The passenger is at least 21 years of age **AND**
- Is also covered for at least \$20,000 of "first-party medical benefits" (either by the operator's cycle insurance or their own).

So, if you were to ride with a passenger, you may need an additional \$20,000 of this medical coverage in addition to the \$20,000 you require as the operator.

I believe this law may negatively **impact civil negligence cases** ("Pain & Suffering") if an injured motorcyclist was not wearing a helmet. The defense attorneys may argue that not wearing a helmet was unreasonable and that it was a cause of the injury or the severity of the injury.

If the jury agrees, a percent of negligence is assessed against the motorcyclist and that percentage is subtracted from the dollar amount awarded by the jury. If the jury decides that the motorcyclist was more than 50% negligent, the motorcyclist would lose—get nothing! More specifically, no money damages are awarded for non-economic loss (pain and suffering) for the injury.

- **Q: Does my VA, Medicare, Blue Cross or other health insurance, satisfy the \$20,000 "First-party medical benefits" coverage?**



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# MICHIGAN'S HELMET LAW (CONT.)

- **A: No.** You must buy this coverage on your motorcycle.
- **Q: Can a police officer pull me over for not wearing a helmet?**
  - **A: No.** “Officers are reminded that an officer must have articulable and reasonable suspicion that a violation of the Michigan vehicle code has occurred in order to lawfully stop a vehicle...” Michigan State Police Legal Update #95.
- **Q: Must I carry proof of this new medical benefits insurance or proof that I passed a motorcycle safety class?**
  - **A: No.** There is no requirement under the law to have this proof. MI State Police Legal Update #95
- **Q: What about residents of other states that ride into Michigan? Do they have to have the \$20,000 “first-party medical benefits” coverage?**
  - **A: No.** An email I received from the Michigan State Police states:  
*“A nonresident ...is not subject to the \$20,000 security requirement if he or she operates the motorcycle in Michigan for an aggregate of 30 days or less in any calendar year. See MCL 500.3102 and Gersten v. Blackwell, 111 Mich. App. 418 (1981). The age and motorcycle endorsement or motorcycle safety course provisions apply to non-residents and residents alike.”*
- **Q: How do I get the proper “extra coverage” in order to legally ride without a helmet?**
  - **A: The bottom line: If you want to ride without a helmet, the best way to get the proper ‘extra coverage’ in order to be legal is to call an independent agent who specializes in selling motorcycle insurance in Michigan.** Tell them you want the required \$20,000 of “First-party medical benefits” for yourself. If you want to ride a passenger with no helmet, you need another \$20,000. Ask them if it makes a difference if the passenger is a friend or a family member with whom you live. Some policies do not cover non-relatives in your household. I have heard many stories of bikers getting the wrong insurance on-line or by calling an 800 number. I recommend that you talk this through with an actual Michigan insurance agent.



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# NO-FAULT BENEFITS

- **Q: Which insurance company pays the No-Fault Benefits for a MOTORCYCLIST?**
  - **A:** If you are operating or riding on a **MOTORCYCLE**, you are involved\* in an accident with a motor vehicle\* (typically a car, truck, van, but not another motorcycle) and you suffer injury as a result, the automobile insurance company that is responsible for paying your First Party benefits is determined by the following order of priority:
    - 1. Owner or Registrant of the Motor Vehicle Involved** – an injured motorcyclist goes first to the automobile insurance company of the owner or registrant of the involved motor vehicle (not motorcycle) for payment of benefits. If the owner or registrant does not have auto insurance, proceed to the next level.
    - 2. Operator of the Motor Vehicle Involved** – If the operator or the involved motor vehicle (not motorcycle) has automobile insurance, that company pays benefits. If not, proceed to the next level.
    - 3. Insurance Company of the Motor Vehicle (not motorcycle) of the Operator of the Motorcycle** – If none, proceed to the next level.
    - 4. Insurance Company of the Motor Vehicle (not motorcycle) of the Owner or Registrant of the Motorcycle** – If none, proceed to the next level.
    - 5. Spouse or Resident Relative** – if the injured motorcyclist lives with a spouse or relative that has an insured motor vehicle, that insurance company pays benefits. If not, proceed to the next level.
    - 6. Assigned Claims Facility** – If there is no insurance available at any of the levels described above and there are no exclusions that bar a claim, the Assigned Claims Facility will assign the claim to an insurance company for payment of benefits.  
An application for benefits must be made with the correct auto insurance company within one year or benefits do not have to be paid.



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# WRONGFUL DEATH CASES

## – Q: HOW DOES A MOTORCYCLE WRONGFUL DEATH CASE WORK?

– **A:** When a victim dies because of an accident involving a vehicle, both the Michigan No-Fault Act and the Michigan Wrongful Death Act are applicable. Ultimately an Estate must be opened, and a Personal Representative must be appointed by the Court. The Personal Representative stands in the shoes of the victim and can bring a lawsuit against all parties that are potentially responsible for the death. Any money obtained in a lawsuit becomes proceeds of the Estate and is distributed to those who qualify to receive it under the law. The Court must authorize the settlement and the distribution of the assets from a death case.

## – Q: APPOINTMENT OF A PERSONAL REPRESENTATIVE?

– **A:** If there is a Will, the deceased probably has named someone as his or her Personal Representative; that person would probably be appointed by the Probate Court. If there is no will, the court will appoint a Personal Representative according to statutory requirements. The Personal Representative of the deceased's Estate has the power to hire a personal injury attorney and make decisions on behalf of the Estate. We commonly appoint co-personal representatives if there is any dispute or worries within the family.

## – Q: DAMAGES AVAILABLE IN A DEATH CASE?

– **A:** The major damages recoverable in a Wrongful Death action include: (1) pain and suffering that the deceased suffered before her death, (2) future wage loss and (3) loss of society and companionship. First party benefits are also available when there is an accident-related death involving a 'motor vehicle'. These benefits are known as **survivor loss benefits**.

## – Q: WHO HAS A RIGHT TO BE COMPENSATED UNDER THE WRONGFUL DEATH LAW?

– **A:** Those persons entitled to recover damages in wrongful death actions are described by statute, MCLA 600.2922(3), but its provisions are broad and are subject to judicial interpretation. The persons who may be entitled to damages under the Wrongful Death Act are limited to any of the following who *suffer damages* and survive the deceased:

1. The deceased's spouse, children, (this includes adopted children) descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would have passed under the probate laws and the laws of the State of Michigan.
2. The children of the deceased's spouse (This would include decedent's step-children).
3. Persons named under the will/trust of the deceased, if not violating Michigan law.

Other persons with special standing or relationship with the deceased may be entitled to compensation. The above list should not be considered as all inclusive.



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# MOTORCYCLE ROAD DEFECT & POT HOLE CASES

Sometimes a pothole, uneven cement, or construction work can cause a motorcycle to go down. If the defect was caused by a road construction company, a negligence case can be brought against it.

If the defect was in the road, county or state may be liable for damages. The government may be granted immunity from being sued, but it all depends on the facts. Proper 'notice' is necessary. Therefore, time is of the essence. If proper notice is not given within a specific time, a case may fail. We recommend immediately taking many pictures of the area.

In motorcycle road defect cases, typically there is no "motor vehicle" involved in the crash and therefore, no-fault benefits will not be paid. However, all damages may be recovered from entity responsible for the roadway. This could be Michigan Department of Transportation or MDOT/the state of Michigan or a construction company that did or was doing work on the roadway.



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# MICHIGAN'S CATASTROPHIC CLAIMS ASSOCIATION (MCCA)

**It's not for you; It's for insurance companies, but you pay for it.**

Most motorcyclists have a huge misunderstanding of the Michigan Catastrophic Claims Association (MCCA). What the MCCA is and what it does is a mystery to many.

The MCCA's website states "The Michigan Catastrophic Claims Association (MCCA), a private non-profit unincorporated association, was created by the state Legislature in 1978. Michigan's unique auto insurance no-fault law provides unlimited lifetime coverage for medical expenses which result from auto accidents. The MCCA reimburses auto no-fault insurance companies for each Personal Injury Protection (PIP [No-Fault]) medical claim paid more than a set amount. Currently that amount is \$555,000. That means that the insurance company pays the entire claim, but is reimbursed by the MCCA for medical costs over \$555,000."

"All auto insurance companies operating in Michigan are assessed to cover the catastrophic medical claims occurring in Michigan. Those assessments are generally passed on to auto insurance policyholders. The 2018 assessment is \$192.00 per vehicle." In layman's terms, that means that anyone who insures a vehicle, including a motorcycle, is assessed \$192. This money goes into the MCCA's fund for a pool of money to pay any claim that reaches \$555,000. The fund is used to reimburse insurance companies only. It is not used to pay the motorcycle victims.

As a citizen, you have no right to make a claim with the MCCA, even if you are the victim of a motor vehicle collision. The MCCA's fund exists to protect insurance companies from having to handle a large number of catastrophic claims involving vehicle crashes. Imagine if one insurance company receives most of these catastrophic claims. It would have to pay all the claimed medical bills for life.

Theoretically, the company could go out of business if that happened. The MCCA helps mitigate this likelihood and helps insurance companies calculate their potential risk. For vehicle crashes in Michigan, insurance companies will never pay over \$555,000 for medical expenses.

Under the MCCA, motorcyclists are treated the same way as Michigan car owners. They're both assessed \$192. Some people argue that motorcyclists get shorted by having to pay this same \$192 assessment because many times motorcyclists aren't entitled to no-fault benefits after a crash.

How is that possible? The only time no-fault benefits are available to anyone is if a "motor vehicle" is "involved" in the crash. Believe it or not, under Michigan's no-fault law, a motorcycle isn't included in the definition of a "motor vehicle." To get benefits, a car, truck, van, or SUV must be "involved."

The MCCA doesn't exist to serve motorcyclists or help them file claims. It exists to protect insurance companies from paying too much.



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## TIPS IF YOU ARE IN A MICHIGAN MOTORCYCLE CRASH

1. Do not leave the scene of the accident.
2. Call the police/911 immediately. Make a police report.
3. Obtain the following information if possible. It's easy to just take a picture with your phone:
  - A. The at-fault driver's license. (name, address, telephone number, driver's license number)
  - B. Other driver's insurance information
  - C. License plate
  - D. Witnesses—get name and telephone number
  - E. Police Officer: get the police report number. Most often they will give you their card with the incident number and online info as to how to obtain it.
4. Photograph:
  - A. Take photos of the vehicles involved.
  - B. Take photos of the scene so we can explain how the crash occurred.
5. Do not admit that you were the cause of the accident. This will be determined by the investigating police officer.
6. Provide the investigating officer of your version of what happened. If it was the other driver's fault; state so assertively.
7. Get medical treatment immediately. Make sure that you let the doctor know all your symptoms, some may not seem as significant at the time, but they could be warning signs of a bigger problem. Often you will feel more pain a couple days after the accident. Under the Michigan No-Fault Law you are entitled to medical benefits for treatment arising out of any injuries that you receive in most automobile related collisions. However, if you delay treatment these claims could be denied as not being related to the accident.
8. Contact our office for an explanation and advice as to how the law applies to your situation and crash facts.
9. Contact your insurance company.



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## CONCLUSION

My hope is that this eBook helped educate you on Michigan's motorcycle law, the best insurance coverage that helps and protects you and set the record straight regarding the many of the misconceptions in this area.

Thank you for reading and ride safely. Please feel free to call me about anything. It would be a privilege to represent you or a loved one.

*Jason A. Waechter*

**JASON A. WAECHTER**  
THE MOTORCYCLE LAWYER<sup>SM</sup>



**THE NUMBER TO CALL IF YOU FALL IS 1-877-BIKER-LAW**  
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*Caveat: This e-book is not a complete guide to the law. Laws change. The No-Fault Law changes when new laws are passed and/or when the appellate courts decide cases that change the law. Because the law is constantly changing, you should contact our office, so the facts of your particular case are applied to the most current law for accurate legal advice.*

*\* There are many exceptions, special definitions and complex issues that cannot be explained in this book. Terms such as Motorcycle, Motor Vehicle, and Involved. This eBook is not intended to be a substitute for case specific legal device. Your legal rights greatly depend on the facts of your Michigan motorcycle accident. These materials are meant to be informative and provide a basic understanding of the rights as Michigan motorcycle accident victim. This is not a complete in all-encompassing informative guide to law. Every year in Michigan the no-fault law and Michigan motorcycle law changes in some fashion. In this brief space, we could not explain all situations and legal issues.*



**ATTORNEY JASON WAECHTER**

Representing Injured Motorcyclists

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