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A QUICK GUIDE TO NEW JERSEY PIP RECOVERY

Current as of October 26, 2023

For further information, case law, and more: www.janmeyerlaw.com/njip

PIP (INCLUDING RECOVERY OF APIP AND BUS-PIP) IS RECOVERABLE FROM:

- **Tortfeasors not required to carry PIP/Bus-PIP or although required to carry PIP/Bus-PIP failed to do so.** N.J.S.A. 39:6A-9.1. See below re "Who Is Required To Carry PIP In New Jersey." Note that this right of recovery includes all non-motor vehicle tortfeasors. State Farm Mut. Auto. Ins. Co. v. Licensed Beverage Ins. Exchange, 146 N.J. 1 (1996). Vehicles carrying PIP but not required to do so are subject to recovery. Drive N.J. Ins. Co. v. Gisis, 420 N.J. Super. 295 (App. Div.) certif. denied 208 N.J. 599 (2011). Note that the statute permits recovery of "the costs of processing benefit claims and enforcing rights," at least from insured tortfeasors. Legal fees for PIP recovery may not be recovered.
- **An equitable pro-rata share from another insurer whose PIP coverage is applicable.** N.J.S.A. 39:6A-11. Note that the term "equitable pro-rata" is not defined by statute. This recovery is rare as PIP policies may exclude coverage from (1) anyone [other than a named insured(NI)] who is a NI on another policy; and (2) anyone [other than a NI or resident relative (RR)] who is a NI or RR on another policy. N.J.S.A. 39:6A-7(b)(3)-(4). Pro-rata sharing will occur if a person is a NI on multiple policies (note: a spouse generally is a NI even if not listed as such) or is not a NI on any policy but is a resident relative on multiple policies.
- **From an insured's Workers' Compensation or Disability Carrier.** N.J.S.A. 39:6A-6.

WHO IS REQUIRED TO CARRY PIP IN NEW JERSEY? (Beyond the "commercial vehicle exception"). The following vehicles require PIP and are exempt from PIP recovery if they carry PIP:

- **Automobiles.** N.J.S.A. 39:6A-3.2. The term "automobile" is defined in N.J.S.A. 39:6A-2 to include:
 - Private passenger automobiles (this includes minivans and SUVs) as long as they are not used as a taxi or rented with a driver. **NB: These vehicles are "automobiles" and require PIP even if they are used commercially.** Note rideshare (AKA TNC) vehicles (e.g. Uber, Lyft) cease to be "automobiles" when the driver accepts a ride request until all passengers exit the vehicle.
 - Pickup trucks, vans, etc. only if they are used for recreational purposes and owned by an individual or husband and wife and are not generally used for work (other than farm work). Note that a large passenger van designed to carry more than the average family falls into this category and only requires PIP if it is individually owned and not generally used for work. Perez v. Farmers Mutual Fire Ins. Co., 417 N.J. Super. 403 (App. Div. 2011).
- **Motor Buses** are required to maintain Medical Expense Benefits Coverage (aka Bus-PIP) N.J.S.A. 17:28-1.6. Motor buses are defined in N.J.S.A. 17:28-1.5, which in turn refers to N.J.S.A. 39:1-1. In brief, buses used as a charter or operating routes for fees require Bus-PIP, as opposed to buses provided as a part of another service (e.g. shuttles from the airport to a hotel) which do not require Bus-PIP. **NB: School buses do not require Bus-PIP.**

PLEASE NOTE that this document is a reference guide only and the opinions set forth herein are subject to and qualified in all respects by the following: (1) We are members of the Bars of the States of New Jersey and New York, and do not hold ourselves out as being an expert in, and do not express any opinion herein as to any jurisdiction other than the states of New York and New Jersey; and (2) The foregoing expresses our legal opinion as to the matters set forth above based upon our professional knowledge and judgment in reliance upon the facts known and legal precedents as of the date of this opinion. This opinion should not be construed as a guarantee that a Court of competent jurisdiction considering such matter would not rule in a manner contrary to the opinions set forth above.

HOW IS PIP RECOVERED?

- **From an insured tortfeasor:** By inter-company agreement or arbitration. N.J.S.A. 39:6A-9.1(b).
- **From an uninsured tortfeasor:** By suit.
- **An equitable pro-rata share from another insurer whose PIP coverage is applicable:** By inter-company agreement or arbitration only. N.J.S.A. 39:6A-11.
- **From a WC Carrier:** By first paying the PIP claim and then intervening in the insured's claim in WC Court or filing in WC Court directly. Speiser v. Harleysville Ins. Co., 237 N.J. Super. 507 (App. Div. 1990), Hetherington v. Briarwood Coachlight, 253 N.J. Super. 484 (App.Div. 1992).

STATUTES OF LIMITATION:

- **Recovery from a tortfeasor (insured or uninsured): Two years from receiving the formal PIP application/claim form.** N.J.S.A. 39:6A-9.1, N.J. Manufacturers Ins. v. Holger Trucking Corp., 417 N.J. Super. 393 (App. Div. 2011). When recovering from the insurer of a tortfeasor, the SOL may be satisfied by (1) filing for arbitration if all insurers involved are arbitration signatories; (2) filing suit to compel arbitration; or (3) partial payment by the insurer of the tortfeasor (See Allstate Ins. Co. v. Universal Underwriters Ins. Co., 330 N.J. Super. 628, 636 (App.Div. 2000)).
- **An equitable pro-rata share from another insurer whose PIP coverage is applicable:** No specific SOL, but don't wait TOO long (laches). Ideal Mut. Ins. Co. v. Royal Globe Ins. Co., 211 N.J. Super. 336, 340, 511 A.2d 1205 (App.Div. 1986). Note if company A paid and company B should have, and A seeks 100% back from B, this does not fall under N.J.S.A. 39:6A-11 and the two-year SOL for PIP claims (N.J.S.A. 39:6A-13.1(a)) may apply.
- **From an insured's Workers' Compensation carrier where WC applies:** two years from the date of accident. Selective Ins. Co. V. Jones, 244 N.J. Super. 641, 645 (App. Div. 1990).

OTHER KEY POINTS OF NEW JERSEY PIP RECOVERY *For further information, including explanation and citations, see our website at www.janmeyerlaw.com/njPIP.*

- **Recovery of PIP from an insured tortfeasor is limited to a claim against the adverse insurer, can only be paid after the insured's bodily injury claim has been resolved, can only be made up to insurer's available liability limits, and may not be recovered from the insured tortfeasor's personal assets.** N.J.S.A. 39:6A-9.1(b).
- **Out of state vehicles subject to NJ's "deemer" statute are treated the same as NJ vehicles for NJ accidents**, meaning that if they are an "automobile" or "motor bus" they must provide PIP coverage, are insulated from PIP recovery, and may recover PIP from tortfeasors in the same situations and in the same manner as NJ PIP/Bus-PIP carriers. **Out of state vehicles not subject to "deemer" do not have to provide PIP/Bus-PIP and are subject to PIP recovery.**
- **Self-insurers are treated as insurance companies.**
- **PIP recovery is a direct statutory right, not a subrogated right.** This has many practical applications. One example is that an insured's signing a release to the tortfeasor will not prejudice PIP recovery rights.
- **PIP is not recoverable against public entities or employees.**
- **Rideshare (AKA TNC) vehicles (e.g. Uber,Lyft):** Rideshare vehicles do not require PIP (and hence are subject to PIP reimbursement claims) from the time the driver accepts a ride until the passenger(s) depart. Before that, the TNC policy must provide PIP coverage if the driver's policy doesn't, but the driver's policy may also provide coverage. Passengers in rideshare vehicles generally are not entitled to PIP.

SEE OUR PIP RECOVERY WEBSITE, WWW.JANMEYERLAW.COM/NJPIP FOR:

- Texts of relevant PIP statutes with hyperlinks to definitions of key terms.
- Additional case law & notes regarding PIP recovery.
- Selected NJ laws related to subrogation including:
 - Statutes of Limitation.
 - NJ's modified comparative negligence.
 - NJ's modified joint and several liability.
 - NJ's collateral source rule.
 - NJ's made whole doctrine.
 - ERISA subrogation in NJ.
 - The effect of an insured's release on subrogation rights.
 - Primary, excess, and co-primary policies in NJ.
 - UM/UIM subrogation and the verbal threshold.
- **Similar discussions and "quick guide" for New York PIP recovery.**