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A QUICK GUIDE TO NEW JERSEY PIP RECOVERY

Updated 1/12/11

For more information: www.janmeyerlaw.com/njpip

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). Note that the statute permits recovery of “the costs of processing benefit claims and enforcing rights,” at least from insured tortfeasors, but this has been held to exclude legal fees.
- **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) who is a NI or resident relative 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 will be 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 Carrier where WC applies.** 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. Whether a vehicle is an “automobile” is determined first by looking at the type of vehicle and then by looking at the use of the vehicle. New Jersey Manufacturers Ins. Co. v. Hardy, 178 N.J. 327, 335 (2004). 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 "automobile"s and require PIP even if they are used commercially.**
 - Pickup trucks, vans (vans used for cargo or large numbers of people and therefore typically used by business rather than families), 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).
- **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 State 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 state of New York; 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 only. N.J.S.A. 39:6A-9.1.
- **From an uninsured tortfeasor:** By suit.
- **An equitable pro-rata share from another 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 directly making a WC claim or having a lien against the insured's WC claim. 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 the filing of the PIP claim.** N.J.S.A. 39:6A-9.1. 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).
- **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, as well as additional case notes, see our website at www.janmeyerlaw.com/njpip.*

- **Recovery of PIP from the insurer of a vehicle is limited to a claim against the adverse insurer, can only be recovered up to insurer's available liability limits, and may not be recovered from the insured tortfeasor's personal assets.**
- **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.**

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 insurer's release on subrogation rights.
 - Primary, excess, and co-primary policies in NJ.
 - UM/UIM subrogation and the verbal threshold.