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Admitted to Practice:

New Jersey *

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A QUICK GUIDE TO NEW YORK PIP RECOVERY

NASP Annual Conference 2010

For more information: www.janmeyerlaw.com/nypip

WHEN AND HOW IS PIP RECOVERED?

- **From the insurer of a “covered person”** (basically, a pedestrian or a person covered by PIP) **only in an accident involving a vehicle weighing more than 6,500 pounds, unloaded, or a vehicle used principally to transport people or good for hire.** N.Y. Ins. L. § 5105 (a). Note: the 6,500 pound vehicle or vehicle for hire need not be the at-fault vehicle. **Recovery is by arbitration at Arbitration Forums.** N.Y. Ins. L. § 5105 (b) and 11 N.Y.C.R.R. 65.10(b).
- **From a “non-covered person”** (basically, neither a pedestrian nor a person covered by PIP) **other than a properly insured motorcycle.** N.Y. Ins. L. § 5104. **Recovery is by way of a lien against the insured’s bodily injury claim, or, by direct suit if the insured does not file a bodily injury claim within two years of the accident.** N.Y. Ins. L. § 5104 (b).
- **From another insurer who should be the primary PIP carrier.** N.Y. Ins. L. § 5105 (b). Note that in general the primary carrier is the insurer of the car in the accident, not the injured person’s own insurer. See N.Y. Ins. L. § 5103. **Recovery is by arbitration at Arbitration Forums.** N.Y. Ins. L. § 5105 (b) and 11 N.Y.C.R.R. 65.10(b)
- **Additional PIP (APIP)** is always recoverable (note that like PIP recovery, it is not subject to a serious injury threshold). This was the common law rule and then was affirmed by N.Y. General Obligations Law § 5-335(b). **Potentially recoverable by direct suit or by contractual/equitable lien.** Aetna Cas. and Sur. Co. v. Jackowe, 96 A.D.2d 37, 468 N.Y.S.2d 153 (2nd Dept. 1983)

STATUTES OF LIMITATION:

- **Against an insurer** (i.e. in an accident involving a vehicle for hire or weighing over 6,500 pounds): **three years from the date of each individual payment made.** Motor Vehicle Acc. Indemnification Corp. v. Aetna, 89 N.Y.2d 214, 652 N.Y.S.2d 584 (1996). Note that this SOL applies even to claims against government entities. City of Syracuse v. Utica Mut. Ins. Co., (4 Dept. 1982) 90 A.D.2d 979, 456 N.Y.S.2d 571, *affd.* 61 N.Y.2d 691, 472 N.Y.S.2d 600, 460 N.E.2d 1085.
- **Recovery of PIP from a “non-covered person.”** Recovered by lien against insured’s bodily injury action. **If insured does not file within two years of the accident, insurer may file direct suit from two years and one day until five years after the accident.** Safeco Ins. Co. of Amer. v. Jamaica Water Supply Co., 83 A.D.2d 427, 444 N.Y.S.2d 925 (2nd Dept. 1981) (per Hopkins, J.P.), *aff’d* 57 N.Y.2d 994, 457 N.Y.S.2d 245, 443 N.E.2d 493 (1982)
- **From another insurer who should be the primary PIP carrier: three years from the date of each individual payment made.** Motor Vehicle Acc. Indemnification Corp. v. Aetna, 89 N.Y.2d 214, 652 N.Y.S.2d 584 (1996).
- **Recovery of Additional PIP (APIP): three years from the date of the accident even if the first Additional PIP payment was not made within three years of the accident.** APIP recovery is treated as a plain, vanilla tort. Allstate Ins. Co. v. Stein, 1 N.Y.3d 416, 775 N.Y.S.2d 219 (2004). **Any special SOLs for torts (e.g. for suing state, a municipality, or a public corporation) will apply.**

OTHER KEY POINTS OF NEW YORK PIP RECOVERY *For further explanation and many other case notes, see our website at www.janmeyerlaw.com/nypip.*

- **Recovery of PIP from the insurer of a vehicle** (i.e. in an accident involving a vehicle for hire or weighing over 6,500 pounds) does not come out of the insurer's liability limits. N.Y. Ins. L. § 5105(c)
- **"Optional Basic Economic Loss" (OBEL)** is treated as regular PIP, as it is part of the definition of "Basic Economic Loss" in N.Y. Insurance Law § 5102(a)(5).
- **Out of State Vehicles** are treated as NY vehicles if insured by an insurer authorized in NY or which has filed with the Commissioner of Insurance consenting to service of process and declaring that their policies will meet NY requirements for accidents in NY. Otherwise, they are considered a "non-covered" vehicle and PIP may be recovered through N.Y. Insurance Law § 5104 (b).
- **PIP recovery is not "subrogation."** PIP recovery (where allowed) is a statutory right held by the insurer. APIP recovery, on the other hand, is a subrogation right and is treated as a regular tort. This may have many practical implications. For example, an insured signing a release to the tortfeasor may effect the insurer's right to recover APIP, but cannot effect the insurer's right to recover PIP. Similarly . . .
 - **A Tort Claims notice is not required for PIP arbitration**, since recovery of PIP is a statutory right and not a tort. *City of Syracuse v. Utica Mut. Ins. Co.*, 83 A.D.2d 116, 443 N.Y.S.2d 901 (4th Dept. 1981), *affd.* 61 N.Y.2d 691, 460 N.E.2d 1085, 472 N.Y.S.2d 600 (1984).
 - **The SOL for PIP arbitration is three years from each individual payment even if the tortfeasor was a governmental entity**, *City of Syracuse*, whereas the SOL for APIP will be the same as for torts (generally three years from the date of loss, except where suing the state, municipality, or public corporation).
- **Self-insurers are treated as insurers.** For example, if there is a right of recovery under N.Y. Insurance Law § 5105(a) (i.e. the accident involves a vehicle for hire or a vehicle over 6,500 pounds), the self-insuring company must go to arbitration. See *City of Syracuse v. Utica Mut. Ins. Co.*, 90 A.D.2d 979, 456 N.Y.S.2d 571 (4th Dept. 1982), *affd.* 61 N.Y.2d 691, 472 N.Y.S.2d 600, 460 N.E.2d 1085(1984), *Criterion Ins. Co. of Washington, D. C. v. Commercial Union Assur. Co.*, 89 Misc.2d 36, 41, 390 N.Y.S.2d 953, 958 (N.Y. Sup. Ct. 1976)
- **Suing instead of arbitrating is not the end of the world.** N.Y.C.R.R. 65.10(d)(5)(i) specifies that if a matter that should go to Arbitration Forums is "inadvertently placed in litigation," the case can be discontinued for purposes of submitting the matter to Arbitration Forums, and for Statute of Limitations purposes it will be counted as if the matter was filed with Arbitration Forums on the day that the litigation was instituted.

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

- Texts of relevant statutes with hyperlinks to definitions of key terms.
- Additional case law & notes regarding PIP recovery.
- Selected NY laws related to subrogation including:
 - Selected NY Statutes of Limitation.
 - How are an insurer's subrogation rights effected if the insured signs a release to the tortfeasor?
 - Is it safe to settle with one tortfeasor if I want to recover from another tortfeasor as well?
 - How does the new New York Anti-Subrogation law affect subrogation?
 - ERISA subrogation in NY.

PLEASE NOTE that this document is a reference guide only and that 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.