Mysteries of the Universe
Understanding New Jersey PIP Coverage

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Lesson Plan

I. INTRODUCTION
NEGLIENCE vs. NO FAULT

A plaintiff who wishes to make out a case of negligence based upon a defendant's driving conduct has to establish:

- (a) a duty by the defendant to exercise reasonable care;
- (b) a breach of that duty by the defendant;
- (c) damages sustained by the plaintiff; and
- (d) that damages were caused by the defendant's negligent conduct.

The law imposes upon the driver of a motor vehicle the duty to exercise the care that a reasonably prudent person would exercise under all of the circumstances confronting him or her at the particular time in question. The standard of care is reasonable prudence to avoid injury to another. The failure of a defendant to exercise such care constitutes negligence under New Jersey law. Sanzari vs. Rosenfeld, 34 N.J. 128, 134(1961).

In New Jersey, the insured may choose between three (3) types of policies:

> 1) Standard Automobile Insurance Policy: $25,000/$50,000 bodily injury limits and $25,000 property damage limits and PIP benefits per injured person, as follows: up to $250,000 in medical expense benefits, up to $5200 in wage loss benefits, with a $100 per week cap, up to $4380 in essential services benefits, subject to a $12 per day cap, death benefit consisting of the remainder of the unused loss of income benefit if the deceased is a wage producer, or the remainder of the unused essential services benefit, and a $1000 funeral benefit.
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> 2) Basic Automobile Insurance Policy (also frequently referred to as "alternative" basic auto policy): PIP coverage that includes medical expense benefits with limits of $15,000 per person, but up to $250,000 per person for catastrophic or permanent injury as enumerated in the statute, $5000 per accident property damage limits, and at the option of the insured, $10,000/$10,000 bodily injury liability limits.[4] Insureds under a Basic Automobile Policy are subject to either of the two (2) tort exemption options in N.J.S.A. 39:6A-8, whether or not the optional liability coverage has been purchased.

3) Eligible low income individuals. This “special automobile policy” must contain medical expense benefits coverage up to $250,000 for emergency medical care for the named insured and dependent members of the insured's family following an automobile accident, and a $10,000 death benefit. The eligibility criteria for such a policy are established by the commissioner.

In general - No-Fault Insurance and AICRA. - New Jersey operates under a no-fault automobile insurance system, which includes AICRA. See N.J.S.A. 39:6A-1.1 to 35. Under AICRA, every standard automobile liability insurance policy issued in New Jersey must provide PIP benefits to the named insured and members of the insured's household. N.J.S.A. 39:6A-4. Those benefits are paid regardless of who is at fault for the accident. The amount of PIP coverage varies depending on an insured’s coverage selections.

Public policy - The goal of PIP is to provide prompt medical treatment for those who have been injured in automobile accidents without having that treatment delayed because of payment disputes. Selective Ins. Co. of Am. vs. Hudson E. Pain Mgmt. Osteopathic Med., 210 N.J. 597, 609, 46 A.3d 1272(2012).

Personal injury protection coverage means and includes payment of medical expense benefits in accordance with a benefit plan provided in the policy and approved by the commissioner, for reasonable, necessary, and appropriate treatment and provision of services to persons sustaining bodily injury, in an amount not to exceed $250,000 per person per accident.

In the event benefits paid by an insurer pursuant to this subsection are in excess of $75,000 on account of bodily injury to any one person in any one accident, that excess shall be paid by the insurer and shall be reimbursable to the insurer from the Unsatisfied Claim and Judgment Fund.

II. <u>NEW JERSEY PIP LAE</u>
<u>KEY QUESTIONS</u>

A) How Much PIP Coverage Is Really Permitted?

Under <u>N.J.S.A.</u> 39:6A-4 and 39:6A-3.1, New Jersey policies offer several PIP limits.

Standard Auto Policy

Medical expense benefits may be selected at:

$15,000 (minimum)
$50,000
$75,000
$150,000
$250,000
$250,000

The $15,000 limit must include up to $250,000 for certain catastrophic injuries such as brain injury or spinal cord injury.

PIP also pays for:

medical expenses
income continuation
essential services
funeral expenses
survivor benefits.

Basic Policy

A “basic policy” provides:

$15,000 PIP medical coverage
Up to $250,000 for catastrophic injury

B) Who Is Entitled to PIP Coverage?

Under N.J.S.A. 39:6A-4, PIP benefits apply to:

(1) Named insured

The person who purchased the policy.

(2) Resident relatives

Family members residing in the insured household.

(3) Permissive occupants

Anyone occupying or using the insured vehicle with permission.

(4) Pedestrians

Pedestrians struck by an automobile.

The statute provides coverage to:

the named insured and resident family members injured while occupying, entering into, alighting from, or using an automobile, or as a pedestrian.

C) What Constitutes Primary Coverage?

The priority of PIP coverage is governed by N.J.S.A. 39:6A-4.2.

Primary PIP Coverage Rule

The injured person's own auto policy is primary.

Claimant	**Primary PIP**
Driver	Driver's own policy
Passenger with own car	Passenger's policy
Passenger without car	Household policy
No policy	Vehicle occupied

Only one PIP policy pays for an accident; you cannot stack PIP benefits.

D) What About Selecting Lesser Amounts of PIP Coverage?

A policyholder may elect lower PIP limits.

However:

Minimum medical expense benefit = $15,000
Mandatory $250,000 catastrophic coverage for certain injuries still applies.

Policyholders may also elect health-primary coverage, meaning health insurance pays first and PIP acts as secondary coverage.

E) What Is the “Follow the Family” Rule?

This is a common-shorthand in NJ PIP law.

Principle
PIP coverage follows the person, not the vehicle.

Therefore:

1) Claimant looks to his own policy first.
2) If none exists → resident household policy.
3) If none → policy of the vehicle occupied.

This is why passengers claim under their own policy even when riding in another car.

F) What About Joggers or Pedestrians?

Pedestrian – is any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks. N.J.S.A. 39:6A-2(h).

Example scenarios:

Jogger struck by car
Pedestrian hit in crosswalk
Person struck by object propelled by vehicle

Coverage applies even if the injured person was not inside a vehicle, as long as injury was caused by an automobile.

Priority rule for pedestrians:

1) Pedestrian's own auto policy
2) Household policy
3) Vehicle that struck pedestrian

G) Injured as a Bus Passenger

Generally:

Automobile PIP applies only to "automobiles" as defined in N.J.S.A. 39:6A-2.
Many buses are not classified as automobiles.

Therefore, coverage usually comes from:

1) The bus operator's liability coverage
2) The injured passenger's own PIP policy

Courts have occasionally held that certain vehicles (such as vans used as school buses) can qualify as an "automobile," which allows PIP coverage.

H)What Does "Occupying, Entering, Alighting From, or Using the Vehicle" Mean?

This language determines whether an injury arises out of the use of an automobile. NJ courts interpret it broadly.

Examples covered include:

Occupying

- Sitting in the vehicle
- Riding as passenger

Entering

- Getting into the car
- Opening door to enter

Alighting

- Getting out of the vehicle
- Immediately after exiting

Using the vehicle

Courts interpret this broadly to include activities related to the vehicle's operation or purpose, such as:

- loading/unloading
- inspecting damage after a crash
- assisting a disabled vehicle
- using the vehicle in connection with travel

If the injury arises out of the use of the automobile, PIP applies.

III. PIP DISPUTES

In most cases, Arbitration not Litigation.

PIP Arbitration – Forthright - Any dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute, as hereinafter provided. N.J.S.A. 39:6A-5.1(a).

A request for arbitration of a "PIP dispute" can be made by the injured party, the insured, the provider who is an assignee of PIP benefits, or the insurer. N.J.A.C. 11:3-5.6(a). Since 2011, the Commissioner has used Forthright Solutions (Forthright) as the exclusive PIP arbitration services provider in New Jersey.

The central arbitration question will be: Are the medical expenses both necessary and causally related to the accident? Is there a risk of immediate or irreparable harm?

Attorney fees for winning a PIP Arb – ($1500)

Topics subject to PIP arbitration

1) Medical Necessity of Treatment

Disputes include:

Whether treatment was medically necessary
Whether continued treatment is necessary
Whether diagnostic testing was appropriate

Examples:

MRI necessity
Physical therapy duration
Chiropractic care
surgery recommendations
injections or pain management.

2) Reasonableness of Medical Charges

Disputes over amount billed vs. amount payable under the PIP fee schedule.

3) Causation (Relatedness to the Accident)

Insurers frequently dispute whether treatment is related to the motor vehicle accident.

Arbitration determines:

whether injuries were caused by the accident
whether treatment relates to pre-existing conditions
whether the accident aggravated a prior condition.

4) Medical Fee Schedule Application

New Jersey has a statutory PIP medical fee schedule.

Arbitrators decide:

correct fee schedule region
correct CPT code
application of multiple procedure reductions
whether services fall within fee schedule limits.

5) Diagnostic Test Authorization (Precertification)

Insurers may deny payment if:

required precertification was not obtained
diagnostic tests were performed without approval.

Arbitrators determine whether:

precertification was required
failure to obtain it bars payment.

6) Treatment Protocol Disputes

New Jersey has Care Paths / Decision Point Review rules.

Arbitration may address:

failure to follow treatment protocols
decision point review disputes
penalties for noncompliance.

7) Attendant Care and Rehabilitation Services

Disputes include:

home health care
attendant care services
rehabilitation treatment.

8) Income Continuation Benefits

Although less common, arbitration may determine disputes involving:

lost wage benefits
disability certifications
duration of disability.

9) Essential Services Benefits

These benefits reimburse household services the injured person cannot perform.

Examples:

housekeeping
childcare
maintenance tasks.

Disputes about eligibility or value may go to arbitration.

10) Priority of PIP Coverage

Arbitrators may determine which insurance carrier must pay PIP benefits when multiple policies exist.

Typical disputes:

- passenger vs driver policy
- household policy priority
- employer vehicle policy.

Issues NOT Typically Decided in PIP Arbitration

Certain issues generally remain within the jurisdiction of the courts:

- bad faith claims against insurers
- fraud claims
- declaratory judgment actions involving policy interpretation
- tort claims for pain and suffering
- coverage disputes unrelated to PIP benefits.

IV. DISCUSSION POINTS

Bicycle - A bicyclist is a pedestrian for purposes of the No-Fault Act. Darel vs. Pa. Mfrs. Assoc. Ins. Co., 114 N.J. 416, 419(1989).

LSES [Segway] - The operator of a low-speed electronic scooter is not a pedestrian entitled to PIP benefits. Goyco vs. Progressive, 257 N.J. 313(2024). The Segway was not a vehicle and the plaintiff was not a pedestrian.

Motor bike- Lane vs. Prudential Property & Casualty Insurance Co., 196 N.J.Super 504, 505-06(App.Div.1984) the Appellate Division considered whether a child riding a motor bike was entitled to PIP benefits. The motor bike had no speedometer; its handbrake had been disconnected; and it "bore no license plate, headlights, taillight or turn signals. The court found that the child was not a pedestrian because the vehicle was capable of traveling 30 to 40 miles per hour and could not be propelled other than by a motor. The fact that the motor bike did not have a license plate, headlights, taillight or turn signals and that its handbrake had been disconnected [did] not militate against the trial judge's finding that it was designed primarily for use on highways.

Pedestrians under the Deemer Statute - N.J.S.A. 17:28–1.4 generally requires that an insurer, authorized to do business in New Jersey, must provide PIP coverage for policies sold outside New Jersey, whenever the insured automobile is "used or operated" in this state. In short, the Deemer Statute furnishes the covered out-of-state driver with New Jersey's statutory no-fault PIP and other benefits and, in exchange, deems that driver to have selected the limitation-on-lawsuit option of *N.J.S.A.* 39:6A–8(a) Does not apply to pedestrians. Leggette vs. GEICO, 450 N.J.Super 261(App.Div.2017).

Boardable – Paid or Payable - Past & Future medical bills and admissibility in evidence when plaintiff may need a future operation or will incur future costs.

Collateral Source – N.J.S.A. 2A:15-97 - In any civil action brought for personal injury or death, ... if a plaintiff receives or is entitled to receive benefits for the injuries allegedly incurred from any other source other than a joint tortfeasor, the benefits, other than workers' compensation benefits or

the proceeds from a life insurance policy shall be disclosed to the court and the amount thereof which duplicates any benefit contained in the award shall be deducted from any award recovered by the plaintiff, less any premium paid to an insurer directly by the plaintiff or by any member of the plaintiff's family on behalf of the plaintiff for the policy period during which the benefits are payable. Any party to the action shall be permitted to introduce evidence regarding any of the matters described in this act.

N.J.S.A. 2A:15–97 eliminates the possibility of double recovery by requiring a deduction "from any tort judgment the amount received by plaintiff from collateral sources

Liens – PIP vs. Employee Retirement Income Security Act, 29 U.S.C. § 1001 to 1461 (ERISA).

Two commercial vehicles - PIP coverage limitations involving one or more commercial vehicles.

Drive-by shootings and PIP – Lindstrom vs. Hanover Insurance, 138 N.J. 242(1994)

Motorcycles & dollar a day policies – Residual purchases of PIP coverage

Reduced PIP coverage to save $$ on premiums.

Medical expenses beyond the limits of PIP coverage.

What level of coverage is a household member entitled to receive?

Passengers in a borrowed car with consent of the insured?

Injuries while loading and unloading?

Do I need PIP coverage when renting a vehicle from AVIS?

Quick NJ PIP Rule Summary

Issue	Rule
Minimum PIP	$15,000
Catastrophic injury coverage	Up to $250,000
Who is covered	Named insured, resident relatives, permissive occupants, pedestrians
Primary coverage	Claimant’s own policy
Follow-the-family rule	Coverage follows the person
Pedestrians/joggers	Covered
Bus passengers	Usually, own policy first
Vehicle use	Includes occupying, entering, alighting, or using