



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Gregory V. Serio
Superintendent

The Office of General Counsel issued the following opinion on November 22, 2004, representing the position of the New York State Insurance Department.

RE: No-Fault Additional Personal Injury Protection

Question Presented:

- 1) What is the potential amount of Additional PIP benefits that the occupants of a motor vehicle are eligible for when the operator/non-owner has \$50,000 of additional PIP coverage on his own private vehicle and said operator also resides with a parent who has \$50,000 of additional PIP coverage on her own automobile?
- 2) What are the responsibilities of each carrier to pay Additional PIP benefits to the occupants?

Conclusion:

- 1) There is a total potential amount of \$50,000 each in Additional PIP benefits for each of the occupants, pursuant to N.Y. Code Comp. & Reg. tit 11, § 65-1.3 (Regulation 68), entitled "Requirements for Additional Personal Injury Protection Coverage."
- 2) Each of the two carriers would be responsible for fifty percent of the Additional PIP benefits paid to each occupant.

Facts:

Claimant "A" is operating the vehicle of a friend, with that friend and his girlfriend as passengers, when they are involved in a collision. Basic No-Fault PIP benefits of \$50,000 each are paid to all three occupants from the insurer of the vehicle that they occupied at the time of the accident. Claimant "A" has \$50,000 of Additional Personal Injury Protection ("Additional PIP") coverage on his private vehicle, and also resides with a parent who has \$50,000 of additional PIP coverage on her own automobile.

Analysis:

Under the prescribed Additional PIP endorsement, contained in Section 65-1.3(c), coverage is provided to "the named insured or any relative" (a relative who regularly resides in the insured's household) and to "any other person who sustains personal injury arising out of the use or operation of any other motor vehicle (other than a public or livery conveyance) while occupying such other motor vehicle, if such other motor vehicle is being operated by the named insured or any relative." Therefore, all three occupants of the motor vehicle are covered persons for additional PIP coverage under both the private automobile policy of claimant (the operator of the vehicle) "A" and his mother's private automobile policy, both of which policies provide for \$50,000 in additional PIP benefits.

With respect to the amount of additional PIP benefits available to the occupants and the amount each carrier is liable for, the Other Coverage; Nonduplication Condition in the Additional PIP endorsement mandates in part that "The eligible injured person shall not recover duplicate benefits for the same elements of loss covered by this [Endorsement] or any other optional first party automobile or no-fault automobile coverage" (emphasis added). Therefore, since there are two available policies with additional PIP coverage (which is for \$50,000 (an optional coverage), the amount of additional PIP available for each occupant would be \$50,000 each, since the non-duplication provision limits the coverage available to the amount provided under both policies. Additionally, the endorsement goes on to state that "if the eligible injured person is entitled to benefits under any other optional first-party automobile or no-fault automobile insurance for the same elements of loss covered by this Endorsement this Company shall be liable only for the amount equal to the proportion that the total amount available under this Endorsement bears to the sum of the amounts available under this Endorsement and such other optional insurance, for the same element of loss." As such, each carrier is liable for fifty percent of the \$50,000 in additional PIP benefits to be paid to each of the three occupant claimants.

For further information you may contact Supervising Attorney Lawrence M. Fuchsberg at the New York City Office.