



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

George E. Pataki
Governor

Howard Mills
Superintendent

The Office of General Counsel issued the following opinion on October 3, 2005, representing the position of the New York State Insurance Department.

Re: No-Fault Coverage for New York Resident Injured Outside New York.

Question Presented:

Must an insurer provide No-Fault coverage to a New York resident ("claimant") who was injured by a New York insured vehicle outside of New York?

Conclusion:

The New York resident is entitled to No-Fault coverage. However, which insurer is responsible to pay No-Fault benefits is dependent upon whether the claimant owns a motor vehicle and has his own automobile insurance policy or not.

Facts:

An insurer insured a New York auto dealership who had a driver operating a dealership-owned vehicle in Vermont and got into an accident with the No-Fault claimant. Claimant, a New York resident, was riding a bicycle when he got hit and was injured. He is now submitting claims to the No-Fault insurer of the dealership vehicle for reimbursement under the No-Fault New York Mandatory Personal Injury Protection Endorsement (PIP). The insurer would like to know if it is required to reimburse the claims.

Analysis:

In determining who is eligible for PIP coverage, 11 N.Y. Comp. Codes R. & Regs. Tit. 11, § 65-1.1(d) (2001) reads in relevant part:

(d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle.

This would include the claimant in the factual scenario, since the claimant is a New York resident, who was injured outside of New York, while not occupying another motor vehicle.

However, the claimant might fall under an exclusion in the PIP policy. Exclusion (j) reads in part:

any New York State resident other than the named insured or

relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act;

Under this exclusion, if the claimant owns a car that is insured in accordance with New York law, the claimant must go to his own No-Fault insurer for PIP reimbursements.

Therefore, if the claimant owns his own vehicle and has insurance, under the exclusions in the PIP endorsement, the insurer does not have to pay the claimant. However if the claimant does not own a vehicle and exclusion (j) is not applicable, then the insurer must reimburse his claims.

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