

# NEW JERSEY DEFENSE



3

President's Letter:  
Michelle O'Brien

4

Forthright Amends  
its Rules to Eliminate  
Hearing Regions and  
[Set Video-Conference  
as the Default for  
Appearances](#)

8

Challenges to The  
Ongoing Storm Rule:  
Avoiding the "Unusual  
Circumstance" of a  
Pre-Existing Risk

16

Buyers Beware:  
Piercing the Corporate  
Veil in the Environ-  
mental Context\*

21

O'Toole's Couch:  
Call To Post



# **FORTHRIGHT AMENDS ITS RULES TO ELIMINATE HEARING REGIONS AND SET VIDEO-CONFERENCE AS THE DEFAULT FOR APPEARANCES**

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Effective, August 1, 2022, Forthright's Rules were amended with input from the NJ No-Fault Advisory Council and the approval of the Department of Banking and Insurance. The two substantive changes go hand-in-hand as Forthright's rules now: (1) require in-person PIP hearings to be conducted via Forthright's Videoconference Program; and (2) eliminate regions.

As most are aware, the COVID-19 Pandemic caused disruptions to how most attorneys practiced law, and PIP Arbitrations were no exception. However, unlike most other practice areas, PIP Arbitrations pivoted

quickly and seamlessly from in-person hearings (which were conducted at various offices around New Jersey) to virtual hearings on Zoom. After conducting virtual hearings for the better part of a year, Forthright and the NJ No-Fault Advisory Council began discussing possible rule changes to make this permanent. To pave the way for this change, the first thing to be done was to eliminate regions as required by Forthright's Rule 31 which stated:

### **31. Fixing of Region [In-Person]**

There shall be 3 regions for conducting in-person arbitrations - North, Central

and South. At the time of the filing of the *Demand for Arbitration* the filing party may designate the region in which the arbitration will be conducted except that the region selection is subject to the assignment of DRP set forth in Rule 12.

Next, the discussion focused on how and whether to keep some form of physical in-person hearing available, if necessary. The consensus was that the PIP arbitration process was functioning as well as, if not better than before. PIP practitioners were no longer required to drive between hearing locations and could attend hearings remotely

online. It also became evident that witness participation was easier via videoconference, when necessary. Therefore, it was acknowledged that physical, in-person participation should be the exception – not the norm. It was agreed that attendance at hearings via videoconference would equate to appearing “in-person” for the purpose of these rules. The revised version of Forthright Rule 42 below highlights new language in bold and reflects removed language via strikethrough:

#### **42. Attendance at Hearing [In-Person]**

Persons having a direct interest in the arbitration are entitled to attend the hearing. The DRP shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the DRP to determine the propriety of the attendance of any other persons.

**Parties and/or their representatives are encouraged to appear at all arbitration hearings using the videoconference information provided by Forthright. Any party or representative who cannot access the hearing by videoconference shall appear by telephone using the telephone number provided with the Forthright videoconference information. After the assignment of a DRP, a party may request a non-video hearing to be conducted at the DRP’s designated office. Such request shall be submitted to Forthright on the Request for Non-Video Hearing form clearly setting forth the circumstances meriting a non-video hearing. The request must be received by Forthright no less than 45 days prior to the scheduled hearing date. The other parties will have 10 days from Forthright’s acknowledgment of receipt of the non-video hearing request to submit comments or objections. Forthright will submit timely requests and responses to the DRP for a determination. The DRP shall have 5 days to rule on the request. The DRP may grant the request only upon a finding of extraordinary circumstances. The granting of a non-video hearing request will result in the scheduled hearing being postponed and the rescheduling by Forthright of the non-video hearing to be conducted at the DRP’s designated office. The party**

**representative making the request for a non-video hearing shall attend the hearing in-person at the location of the hearing. Any other parties or representatives may appear in-person or by using the videoconference information provided by Forthright. {The language of this Rule was amended and is effective on August 1, 2022}**

~~Parties and/or their representatives are encouraged to personally appear at all arbitration hearings. Any party or representative who intends to appear by telephone shall use best efforts to notify the other parties and Forthright in advance of the hearing. Any party or representative appearing by telephone, or who has a witness appearing by telephone, must arrange for and bear the cost of teleconferencing for the DRP and all other parties.~~

The net effect of this change is that the majority of cases will proceed (as they have since March 2020) via online videoconferencing at no additional cost to the participants. Forthright’s August 2022 Rule Amendment FAQs highlight the practical benefits of committing the PIP Arbitration system to an online virtual process:

- Elimination of waste in time and cost associated with parties traveling throughout the state.
- Ease of access for witnesses, medical practitioners, insurance adjusters, et cetera, in attending or observing proceedings with minimal disruption to schedules.
- Increased ability of DRPs to exercise appropriate control over hearings, including the elimination of potential for ex parte communications as all parties are admitted to hearings simultaneously.
- Reduction in exposure to COVID-19, its variants, and any future threats to health.

By including an option to proceed physically in-person, Amended Rule 42 preserves that opportunity for cases that meet the extraordinary circumstance threshold. Ultimately, this issue will be submitted to the assigned DRP for a ruling in accordance with the rule. Such a request will postpone any currently scheduled hearing. If granted, the non-videoconference hearing will be held at the assigned arbitrator (DRP’s) office – which may not be near the requesting party’s locale.

The granting of a non-videoconference hearing does not require the non-requesting party to participate in person at that DRP’s office. Rather, the non-requesting party may participate in the hearing via videoconference if they prefer. Notably, these rule amendments do not have any impact on OTP cases and apply only to cases initiated after August 1, 2022.

To recap - all hearings will now proceed via the online (presently Zoom) videoconference platform unless: (1) a party prefers to appear via phone or (2) a party’s Request for Non-Video hearing is granted by the assigned DRP. Audio and / or video recording of hearings is prohibited, so that Zoom feature is disabled by Forthright on its platform. Any party seeking to create a formal, stenographic record of a hearing is reminded to consult and comply with Forthright Rule 46 which states:

#### **46. Stenographic Record of Hearing [In-Person]**

Any party wishing a stenographic record shall make such arrangements and payment with the stenographer directly and shall notify the other parties and Forthright of such arrangements in advance of the hearing. The party arranging for the stenographic record shall provide a copy of the transcript to Forthright upon the request of the DRP and shall provide a copy to all other parties upon request.

This technological advancement in how PIP hearings are conducted was forced upon the user community and upon Forthright as a result of COVID-19. Admittedly, there is little dispute that the use of videoconferencing in place of physical attendance at hearings has benefited medical providers, insurance carriers and practitioners alike in keeping the PIP Arbitration system running efficiently and effectively in the wake of the pandemic.