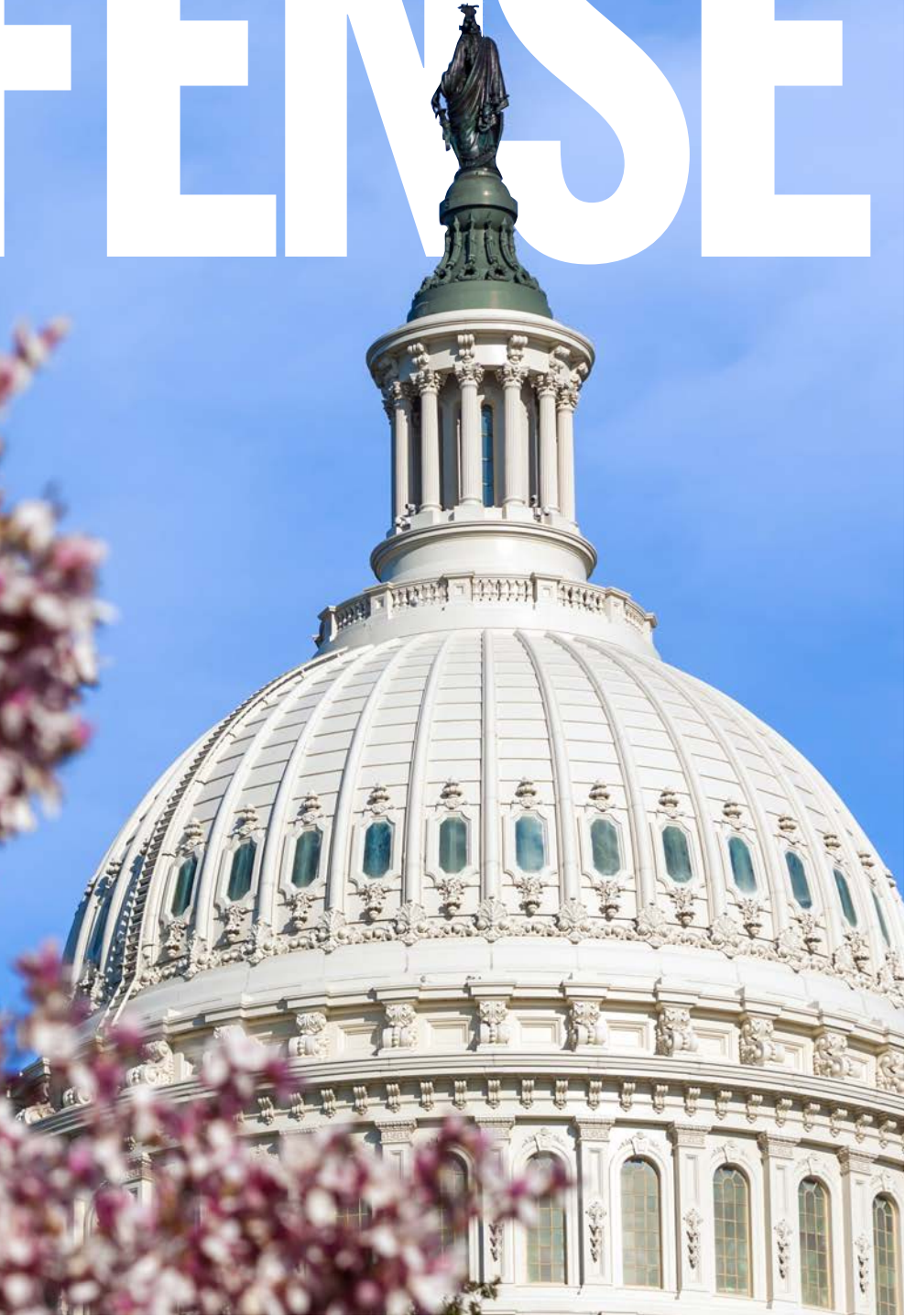


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PIP IMPLICATIONS WHEN OUT-OF-STATE RESIDENTS ARE INVOLVED IN NEW JERSEY ACCIDENTS

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When an out-of-state resident travels to New Jersey and is involved in an automobile accident here, several questions may arise regarding that person's PIP coverage: What are the applicable coverage limits? If there is more than one PIP carrier potentially responsible for coverage, which one is liable? What requirements are imposed upon the claimant and medical providers?

The first issue that must be resolved is whether or not N.J.S.A. 17:28-1.4 applies. This section, commonly known as New Jersey's "deemer statute", provides that an automobile insurance policy issued in another state or in any province of Canada will be reformed to include New Jersey coverage requirements, including PIP coverage of \$250,000 pursuant to N.J.S.A. 39:6A-4. In the case of out-of-state residents, the deemer statute applies when two conditions are met. First, the insurance carrier that wrote the out-of-state policy must be authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State. Secondly, the automobile or motor vehicle insured under the out-of-state policy must be "used or operated in this State."

With regard to the first requirement, it is important to keep in mind that the specific company which wrote the out-of-state policy need not be authorized to transact automobile or motor vehicle insurance in New Jersey, as long as a subsidiary, parent, or commonly owned sister company is so authorized. Cupido v. Perez, 415 N.J. Super. 587, 593 (App. Div.), cert. den. 205 N.J. 16 (2010). In most cases, determining whether or not this prong of the statute is met should be relatively straightforward.

The second requirement, that the "automobile or motor vehicle insured under the policy is used or operated in this State", has been a source of greater dispute. In Cooper Hospital Univ. Med. Ctr. v. Prudential Ins. Co., 378

N.J. Super. 510 (App. Div. 2005), a resident of Pennsylvania was a passenger in his own vehicle and was involved in an accident in New Jersey, while he was a passenger in that vehicle. The vehicle was insured by Prudential under an automobile policy issued in the State of Pennsylvania. Pursuant to Pennsylvania law, the medical expense limits on that policy were \$5,000. As a result of the accident, the insured incurred medical bills in excess of \$120,000. In reversing the Trial Court's ruling that the deemer statute did not apply, the Appellate Division stated "the deemer statute effectively mandates that out-of-state policies within its ambit are automatically construed as New Jersey policies when the covered vehicle is involved in a New Jersey accident." Id., at 515.

The Appellate Division provided further clarification as to what the term "used or operated in this State" means in Leggette v. Government Emples. Ins. Co., 450 N.J. Super. 261 (App. Div. 2017). There, a Virginia resident drove her Virginia-registered and insured vehicle to New Jersey to visit her daughter, who was attending Princeton University. After parking her car in a parking lot, plaintiff locked the car doors, walked away from the vehicle, and exited the parking lot before being struck as a pedestrian while crossing the street. She sustained injuries and underwent medical treatment costing in excess of \$113,000. The Court held that under these circumstances, there was no substantial nexus between the use of the vehicle and the accident. At the time she was struck, her use of the vehicle had ended. As a result, the deemer statute did not apply and plaintiff was not entitled to New Jersey PIP coverage. Id., at 270.

Once it is determined that the deemer statute applies, the out-of-state policy is automatically construed as providing New Jersey coverage and New Jersey law applies. See, Adams v. Keystone Ins. Co., 264 N.J. Super. 367 (App. Div. 1993). For instance, New Jersey PIP coverage applies immediately, and not only after the out-of-state benefits have been exhausted. See, State Farm v. Crocker, 288 N.J. Super. 250

(App. Div. 1996). Further, the application of New Jersey law is not limited to the amount of PIP coverage available to the insured. Rather, New Jersey's statutory and regulatory scheme permitting either party to a PIP dispute to elect to have the matter resolved in arbitration applies as well. Id.; see also, N.J.S.A. 39:6A-5.1; N.J.A.C. 11:3-25.1, et. seq. New Jersey's PIP requirements regarding pre-certification of medical treatment, internal appeals processes, and processing of bills will also apply. See, N.J.S.A. 39:6A-4.6; N.J.A.C. 11:3-4.1, et. seq.; N.J.A.C. 11:3-29.1, et. seq.

On the other hand, when the deemer statute does not apply, determining which state's law will apply becomes less clear. Under these circumstances, a choice of law analysis is required.

In State Farm v. Estate of Simmons, 84 N.J. 28 (1980), the Supreme Court noted that a choice of law analysis regarding an automobile insurance policy involved principles of both contract and tort law. The Court was presented with a situation where an insured purchased an automobile in the State of Alabama and registered and insured the vehicle in that State. He then joined the U.S. Marine Corps and was assigned to New Jersey. He maintained his home in Alabama with his mother and spent his leaves there. Although the insured did not initially bring his automobile to New Jersey, he later returned to Alabama on leave and returned with his car. A few weeks after bringing his car to the base, the insured agreed to let a fellow Marine borrow it to drive to the bank and cash his paycheck. The agreement was that the car would be returned immediately. However, the borrowing Marine did not return the car as agreed. In fact, there was a confrontation when the owner saw him and some friends leaving a nightclub and entering the car, at which point he explicitly refused to return the car. Early the next morning, the insured was informed that his car had been involved in an accident and all occupants were killed. Id., at 30-32.

The Simmons Court was called upon to determine whether the driver of the insured vehicle

was a permissive user, which would entitle him to liability coverage in connection with the accident. Although not a dispute over PIP benefits, the Court's analysis would prove instructive in a PIP context. After analyzing both contract and tort principles, the Court expressed a rule that the state where the policy was entered into will typically govern. It was reasoned that such a rule would comport with the reasonable expectations of the parties. However, this is not an absolute rule and can be overcome if another state has a more significant relationship with the dispute. Applying that analysis, the Supreme Court in Simmons determined that Alabama law should apply in determining whether or not the driver that borrowed the insured car was a permissive user. The vehicle had been insured in Alabama and was only in New Jersey for a matter of weeks when the accident occurred. The insured's presence in New Jersey was temporary and he intended to return to Alabama. Under such circumstances,

New Jersey did not have a significant enough interest in the dispute to overcome Alabama's interest as the place where the policy was entered into. Id., at 37-38.

Applying a choice of law analysis to a PIP dispute, the Appellate Division in North Jersey Neuro-surgical Assoc. v. Clarendon National Ins. Co., 401 N.J. Super. 186 (App. Div. 2008) had to determine whether New York or New Jersey law would apply where a New Jersey resident was involved in a New York accident. The result of this analysis would determine whether PIP benefits were provided by the insurer of the host vehicle in the amount of \$50,000 (under New York law) or by the patient's resident relative's policy in the amount of \$250,000 (under New Jersey law). In this instance, the court determined that New Jersey law should apply because the policy was issued in New Jersey, the patient lived in New Jersey, and all of the medical treatment occurred in New Jersey.

Therefore, New Jersey had a greater interest in protecting its insured and assuring his medical treatment. Id.

As evidenced above, an out-of-state resident's PIP benefits are determined by first analyzing whether or not the deemer statute applies. In such circumstances, the out-of-state resident is entitled to New Jersey PIP coverage and New Jersey law automatically applies to the claim. Although not relevant to the PIP claim, it is worth noting that the deemer statute also subjects the out-of-state resident to the limitation on lawsuit threshold. However, in those circumstances when the deemer statute does not apply, a choice-of-law analysis is required and the outcome is less clear. The result of these disputes can impact which carrier is responsible for the coverage, how much coverage is available, how bills are processed, and how disputes are resolved.