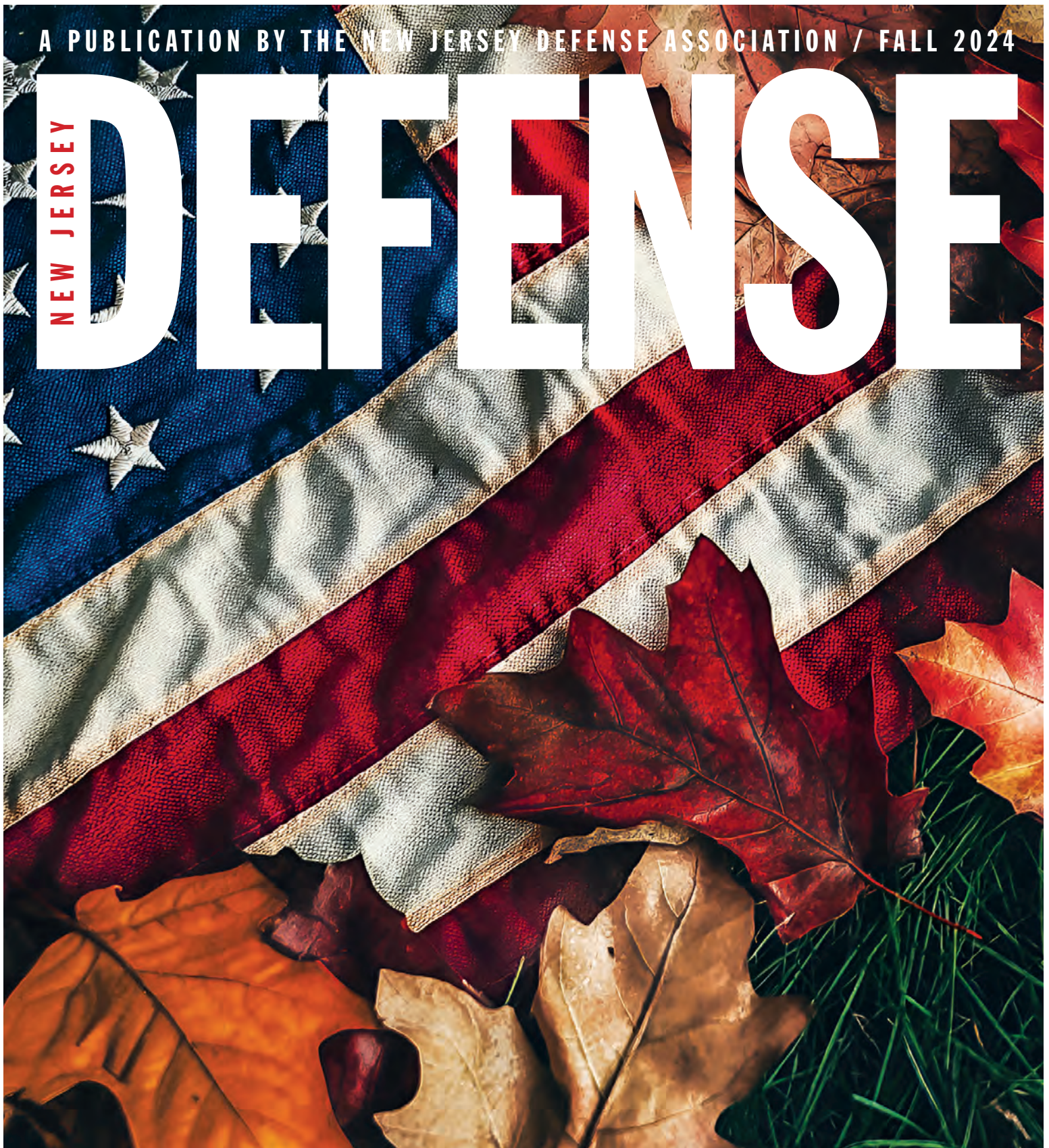


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Supreme Court Rules No PIP to Riders/Operators of Low-Speed Electric Scooters (LSES)



SUPREME COURT RULES NO PIP TO RIDERS/OPERATORS OF LOW-SPEED ELECTRIC SCOOTERS (LSES)

BY NICOLE R. CASSATA, CHASAN LAMPARELLO MALLON & CAPPUZZO, PC

In a unanimous decision, the Supreme Court ruled that an operator of a low-speed electric scooter (LSES) is not entitled to PIP benefits from his own automobile insurance carrier. In *Goyco v. Progressive Insurance Company*, 255 N.J. 429 (2023), a case that garnered significant attention, the court addressed whether an operator of a low-speed electric scooter was a “pedestrian” entitled to personal injury protection benefits under the New Jersey Automobile Reparation Reform Act, (AICRA). The Court held that an operator of LSES did not fall within the definition of “pedestrian” for purposes of the No Fault Act.

On November 22, 2021, David Goyco was injured by an automobile while operating an LSES. Plaintiff Goyco sought reimbursement of PIP benefits under his personal automobile policy with Defendant Progressive Insurance Company. Progressive denied his claim concluding that coverage was not required under the policy since the LSES he was operating did not meet the definition of an automobile and plaintiff was not considered a pedestrian under *N.J.S.A. 39:6A02(h)*. Following the denial, Plaintiff filed a Verified Complaint and Order to Show Cause in Union County seeking coverage as a pedestrian. The Trial Court dismissed the Complaint finding that the plaintiff was not using muscular power and did not fall under the definition of pedestrian.

An appeal ensued and the Appellate Division upheld the Trial Court’s determination that plaintiff did not meet the definition of pedestrian and that the LSES was powered by an electric motor which disqualified plaintiff from recovering PIP benefits.

The Supreme Court in affirming the Appellate Division’s decision reviewed the No Fault Act’s definition of pedestrian which provides “any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed for use on highways, rails and tracks”. Based on the definition of pedestrian, the Court formulated three questions and answered all in the affirmative. First, was a LSES a “vehicle” as defined by the statute; second, was LSES propelled by other than muscular power; and third, whether the LSES is designed for highway use.

Justice Solomon writing for the Court, held that rather in looking to the definition of a “low speed electric scooter”, the Court looked to the plain language of the No-Fault Act and determined that plaintiff’s LSES was a “vehicle”, that uses a rechargeable electric motor and was “propelled by other than muscular power”. The Court further indicated that the LSES was “designed for use on highways, rails and tracks”. By answering these three ques-

tions in the affirmative, the Court concluded that Plaintiff was not a pedestrian and therefore not entitled to recovery of PIP benefits under his policy with Progressive. The Court also reinforced that the No Fault Act and the legislative history suggest that LSES riders are not considered pedestrians for purposes of PIP benefits.

With the use of electric scooters and e-bikes on the rise, the Supreme Court indicated that the policy decision to expand the definition of pedestrian to include LSES operators should be made by the Legislature, not the Court, since such a decision would likely cause significant increases to insurance costs. While the expansion of the definition would undoubtedly advance the medical coverage goal it would undermine the goal of curbing the rise of insurance costs, which is in direct conflict with AICRA.

What does this mean for the future? Presently, and based on the Court’s interpretation of the definition of pedestrian, operators and riders of electric scooters and electric bikes will not be afforded PIP coverage. However, with the increased use of these types of vehicles, and the reference by the Court to the Legislature it is possible in the future that the Legislature will revisit the issue.