

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS

DAVID P. ANDERSON, JR.
Director
OFFICE OF PROFESSIONAL
AND GOVERNMENTAL SERVICES



P.O. Box 037
TRENTON, NEW JERSEY 08625-0037
(609) 292-8553
FAX (609) 777-0551

February 4, 2011

To: Assignment Judges

From: David P. Anderson, Jr.

Subject: P.L. 2011, c.11 (S-191) - Concerns priority of claims against certain insured tortfeasors as between insurer paying PIP benefits and injured party

On January 28, 2011, Governor Christie signed S-191 into law as P.L. 2011, c.11. The new law took effect on January 28, 2011. Attached is a copy of the law for your information.

The new law amends N.J.S.A.39:6A-9.1 to clarify that any recovery by the insurer, health maintenance organization, or governmental agency from the tortfeasor's insurer shall be subject to any claim by the injured party and shall be paid only after satisfaction of that claim, up to the limits of the insured tortfeasor's motor vehicle or other liability insurance policy.

The new law was enacted in response to Fernandez v. Nationwide Mutual Fire Ins. Co., 402 N.J. Super. 166 (App. Div. 2008), aff'd, 199 N.J. 591 (2009), in which the Appellate Division held, and the Supreme Court affirmed, that pursuant to N.J.S.A. 39:6A-9.1, a personal injury protection ("PIP") carrier who has paid PIP benefits to an insured is entitled to reimbursement of those benefits from the insurance proceeds of the third-party tortfeasor, even when the amount of the tortfeasor's insurance is insufficient to make the insured whole. According to the sponsors of the legislation, P.L. 2011, c.11 reverses that outcome.

Kindly advise appropriate staff of this new law. Please contact Kevin Wolfe, Assistant Director, AOC Civil Division at 609-292-8470 if you have any questions regarding Chapter 11.

attachment

c: Glenn A. Grant
Civil Division Judges
Directors
Assistant Directors
Clerks of the Court
Trial Court Administrators
Civil Division Managers

P.L.2011, CHAPTER 11, *approved January 28, 2011*
Senate, No. 191

AN ACT concerning recovery of personal injury protection benefits under certain circumstances and amending P.L.1983, c.362.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to read as follows:

20. a. An insurer, health maintenance organization or governmental agency paying benefits pursuant to subsection a., b. or d. of section 13 of P.L.1983, c.362 (C.39:6A-4.3), personal injury protection benefits in accordance with section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), medical expense benefits pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to section 45 of P.L.2003, c.89 (C.39:6A-3.3), as a result of an accident occurring within this State, shall, within two years of the filing of the claim, have the right to recover the amount of payments from any tortfeasor who was not, at the time of the accident, required to maintain personal injury protection or medical expense benefits coverage, other than for pedestrians, under the laws of this State, including personal injury protection coverage required to be provided in accordance with section 18 of P.L.1985, c.520 (C.17:28-1.4), or although required did not maintain personal injury protection or medical expense benefits coverage at the time of the accident.

b. In the case of an accident occurring in this State involving an insured tortfeasor, the determination as to whether an insurer, health maintenance organization or governmental agency is legally entitled to recover the amount of payments and the amount of recovery, including the costs of processing benefit claims and enforcing rights granted under this section, shall be made against the insurer of the tortfeasor, and shall be by agreement of the involved parties or, upon failing to agree, by arbitration. Any recovery by an insurer, health maintenance organization or governmental agency pursuant to this subsection shall be subject to any claim against the insured tortfeasor's insurer by the injured party and shall be paid only after satisfaction of that claim, up to the limits of the insured tortfeasor's motor vehicle or other liability insurance policy.
(cf: P.L.2003, c.89, s.53)

2. This act shall take effect immediately.