



DOMESTIC/FOREIGN INSURERS BULLETIN NO. 82 (REISSUED)

TO: ALL INSURANCE CARRIERS WRITING AUTOMOBILE POLICIES IN DELAWARE

RE: PIP Subrogation Claims

DATED: December 3, 2015

AMENDED: January 17, 2018

This Bulletin is to remind all insurers writing the automobile insurance coverages required under 21 *Del.C.* § 2118 that:

- Including a personal injury protection (“PIP”) subrogation claim with an offer to resolve a liability claim for bodily injury, death or property damage arising out of ownership, maintenance or use of a vehicle is considered an unfair and/or deceptive act under Title 18, Chapter 23 of the Delaware Insurance Code; and
- Broad release language in a settlement agreement that technically and effectively precludes a PIP carrier from pursuing its subrogation claim is unenforceable pursuant to 21 *Del.C.* § 2118(g) and Delaware case law.

In spite of clear statutory and court-ordered mandate, it has come to the Department’s attention that some automobile insurance carriers and adjusters in Delaware continue to make liability claim settlement offers that attempt to circumvent PIP subrogation claims, notwithstanding the fact that they have been on notice since December 3, 2015 (this Bulletin’s original issue date), that to do so is prohibited by the Delaware Insurance Code and case law.

The Code at 18 *Del.C.* § 2303, provides that:

No person shall engage in this State in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Additionally, 21 *Del.C.* § 2118(g) provides that:

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Insurers providing benefits described in paragraphs (a)(1)-(4) of this section shall be subrogated to the rights, including claims under any workers' compensation law, of the person for whom benefits are provided, to the extent of the benefits so provided.

Delaware Courts have determined that the above-quoted paragraph 2118(g) broadly grants a no-fault carrier a right of subrogation and does not circumscribe the common law right to subrogation, notwithstanding the inclusion of broad release language in a settlement agreement. *See Nationwide Mutual Insurance Company et al. v. Wooters*, 1996 Del. Super, LEXIS 113 at *17; *affirmed* Del. Super. 1996 Del. LEXIS 216; *see also, Peninsula Insurance Company et al. v. Bowman*, 1996 Del. Super. LEXIS 490; *rehearing denied* 1997 Del. Super. LEXIS 243.

Delaware Courts have further determined that "if a tortfeasor settles with an insured with notice or knowledge that a PIP carrier will be making payments for its insured, [a general release] is not a bar to the insurer's right to subrogation." *See U.S.A.A. v. Fulk, et al.*, 1984 Del. Super. LEXIS 851 *7.

This practice can have the effect of driving up costs of litigation and, ultimately, insurance costs for consumers. Accordingly, if the Department determines there exists a pattern or practice of attempts to circumvent a PIP subrogation claim or a failure to specifically state that such language does not release a PIP subrogation claim, the Department will consider appropriate action against insurers to ensure future compliance.

Questions regarding this notice should be directed to Consumer Services at consumer@state.de.us.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



Trinidad Navarro
Delaware Insurance Commissioner

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