

FAQs Regarding Delaware PIP and UM/UIM Coverage

FRANKLIN &
PROKOPIK
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Delaware PIP:

Question:

Does Delaware require mandatory Personal Injury Protection (“PIP”) coverage?

Answer:

Yes (21 Del.C. § 2118), No Fault or PIP coverage is required on all vehicles registered in the State of Delaware. The minimum amount of PIP coverage required by law is \$15,000 per person, \$30,000 per occurrence. Additionally \$5,000 coverage for funeral services is required. Deductibles and certain customary exclusions are valid.

Question:

Who is covered?

Answer:

- 1) Occupants of Delaware registered motor vehicles; named insured’s of a Delaware policy and members of their household while occupying a vehicle not covered by a Delaware policy or when struck as a pedestrian by an out of state vehicle.
- 2) All pedestrians struck in Delaware by a Delaware registered vehicle.
- 3) Certain exclusions such as non-permissive use exclusion may apply. However, in certain cases an exclusion will only reduce coverage to the minimum mandatory amounts.
- 4) Deductibles that serve to reduce or eliminate coverage are permitted, but may not be required.

Question:

Are buses and taxicabs required to carry PIP?

Answer:

Yes, all vehicles are required to carry PIP coverage, however deductibles and certain exclusions may apply. Rental vehicles registered in another state are not required to carry Delaware PIP as long as they comply with the other state’s minimum requirements. Charter buses and limousines must carry a minimum of \$100,000/person/accident and \$50,000/accident for property damage. Taxis must carry a minimum of \$25,000/person/accident and \$10,000/accident for property damage.

Question:

Are you allowed to subrogate PIP claims?

Answer:

Yes. The No Fault carrier may subrogate up to the limits of the tortfeasor’s liability coverage. (21 Del.C. § 2118(g)). The No Fault carrier stands in line behind the injured party for recovery. If the limits are exhausted by the injury claim, then the subrogation claim is extinguished.

Question:

Can a company driver, injured in a company vehicle, recover PIP benefits from the auto policy on his personal vehicle? Can you “stack” PIP policies?

Answer:

Yes, in certain circumstances. Coverage on the occupied vehicle is primary. A household policy can be used as excess coverage. A pedestrian can stack his personal policy with that of the striking vehicle. Policy provisions excluding stacking may be enforceable.

Question:

Can a company driver, injured in a company vehicle, recover PIP benefits if he has made a workers’ compensation claim?

Answer:

Yes, an injured worker may file his claims to maximize coverage and benefits. An injured worker may recover the difference in wages between WC coverage (66 2/3%) and PIP (80%). The WC carrier may then subrogate against the PIP carrier.

Delaware PIP (Continued):

Question:

Can a company waive PIP coverage for members of the public (i.e. passengers or pedestrians)?

Answer:

No. A deductible would apply to all occupants. A non-permissive use exclusion may apply in certain circumstances.

Question:

Can a company waive PIP coverage for its drivers?

Answer:

An exclusion for a specific driver is valid, however, if the excluded driver is still operating the vehicle, then proof of other insurance for that driver is required.

Question:

Does a defendant in a regular bodily injury case get a credit for PIP benefits paid to a plaintiff?

Answer: Yes. If the plaintiff was an occupant of a vehicle required to be registered in Delaware, then the PIP benefits paid are excluded, or put another way, cannot be used as evidence in the case. If the PIP coverage is derived from an out of state vehicle, then the plaintiff may introduce evidence of the medical bills incurred and evidence of PIP coverage is considered a collateral source.

Delaware UM/UIM Coverage:

Question:

Does Delaware require mandatory Uninsured (“UM”) Motorist Coverage?

Answer:

Yes, however UM coverage may be waived in writing by the named insured.

Question:

What are the coverage limits required or allowed?

Answer:

Coverage afforded must be at least the minimum BI limits of \$25,000/\$50,000. Additional coverage up to \$100,000 per person/\$300,000 per occurrence (or \$300,000 single limit) must be offered to the insured. However such coverage cannot exceed the liability coverage on the policy. This offer must be made in writing with any modification of the policy. Failure to offer additional coverage results in the UM coverage being reformed to match the liability limits. If the additional coverage is rejected, then the UM limits will be less than the liability limits.

Question:

How does UIM coverage work?

Answer:

If the insured purchased additional UM coverage, then they automatically also have UIM coverage at the same limits. For a valid UIM claim, the limits of bodily injury coverage under all insurance policies applicable at the time of the accident must be less than the damages sustained by the insured. An insurer is not obligated to make any payments under UIM coverage until after the limits of liability under all policies available to the insured have been exhausted by payment of settlement or judgments.

Copyright ©1/2019 Franklin & Prokopik, P.C. This Franklin & Prokopik document contains information of general interest to the public and does not constitute legal advice. No claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in this document are made. The receipt of this information does not create an attorney-client relationship. As legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel.