



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report to Clarify the Date on which a “PIP” Claim is “Filed” Pursuant to N.J.S. 39:6A-9.1(a)

March 09, 2019

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

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Executive Summary

An insurer that has provided personal injury protection (“PIP”) benefits must bring suit seeking reimbursement from a tortfeasor before the conclusion of the two-year statute of limitation or lose the ability to bring such an action.¹ The two-year period begins upon “the filing of a claim” for such benefits.² A question regarding the commencement of the statute of limitations arises, however, upon the filing of multiple PIP applications.

In *Abdulai v. Casabona et al.*³, the Appellate Division was asked to determine the date on which a PIP claim was “filed” because both the insured and his health care provider each submitted a PIP application on separate dates and used separate forms for their submissions. The Court recognized that the language in N.J.S. 39:6A-9.1(a) is ambiguous regarding the date on which a PIP claim is deemed to be “filed” for purposes of calculating the statute of limitations.⁴

Statute

N.J.S. 39:6A-9.1(a) Recovery of personal injury protection benefits from tortfeasor

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.

Background⁵

On June 26, 2011, a vehicle owned by Budget Truck Rental, LLC (“Budget”) allegedly struck the rear of the automobile that was being driven by Agim and Rufije Abdulai (collectively,

¹ N.J.S. 39:6A-9.1.

² *Id.*

³ 2016 WL 1334539 (App. Div. 2016).

⁴ *Id.*

⁵ See Figure 1.

the “Abdulais”).⁶ On June 27, 2011, the Abdulais’ injuries were reported to their insurance carrier, Mercury Indemnity Company of America (“Mercury”).⁷ On June 29, 2011, Mercury’s insurance adjuster mailed a PIP application (the “Mercury application”) to the Abdulais’ attorney and requested that it be completed and returned to the insurance company.⁸

In July 11, 2011, Mercury received a “generic” PIP application, signed by the Abdulias, from their treating provider.⁹ On July 22, 2011, Mercury placed the tortfeasor’s insurance company, Acadia Insurance Company (“Acadia”), on notice of its intention to seek reimbursement for PIP benefits paid on behalf of the Abdulias.¹⁰ On August 3, 2011, the Abdulais completed Mercury’s PIP application.¹¹ This PIP application was received by Mercury on August 15, 2011.¹²

On August 2, 2013, Mercury filed a complaint against Acadia, and others, seeking reimbursement of PIP benefits that it paid on behalf of the Abdulais’.¹³ On January 31, 2014, Acadia filed summary judgment motion alleging that Mercury’s complaint for PIP reimbursement was filed outside the two-year statute of limitations proscribed by N.J.S. 39:61-9.1.¹⁴ Acadia argued that Mercury’s July 11, 2011, receipt of the generic PIP application triggered the statute of limitations set forth in N.J.S. 39:61-9.1(a) and that Mercury’s complaint was not filed within the time-frame set forth in the statute.¹⁵

On February 28, 2014, the trial court denied Acadia’s motion for summary judgment.¹⁶ The trial court held that “the claim” was deemed “filed” when it is submitted by the insured in the form requested by the insured rather than the submission of a generic form submitted by a health care provider.¹⁷

Analysis

In *Abdulai v. Casabona et al.*¹⁸ the Appellate Division was asked to determine when a claim was deemed “filed” for purposes of initiating the statute of limitations set forth in N.J.S. 39:6A-9.1(a). The Court observed that the statute “does not provide a definition for the date that triggers the ‘filing of a claim.’”¹⁹ The Court further recognized that the language contained in

⁶ *Id.* at *1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at *1-2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 2016 WL 1334539 (App. Div. 2016).

¹⁹ *Id.* at *3.

N.J.S. 39:6A-9.1(a) is ambiguous concerning when a PIP claim is deemed to be “filed” for purposes of calculating the statute of limitations.²⁰

In *New Jersey Mfr. Ins. Grp. v. Holger Trucking Corp.*²¹ the Appellate Division was asked “whether the claim is filed when an insured or health care provider first **requests** reimbursement for PIP benefits or when the insured **submits** a claim form requested by the insurer.”²² The Court concluded that, “it is the **submission** of the PIP claim form that triggers the two-year statute of limitations period contained in N.J.S.A. 39:6A-9.1....”²³

In *Abdulai v. Casabona* the Court recognized that there were significant distinctions between the generic PIP application provided by the third-parties and the application provided to the insured by the insurer.²⁴ Among the differences are: the presence of HIPPA authorizations that enable the surety to obtain additional treatment records critical in determining causality of injuries and treatment; the request for added detail regarding all household vehicles, insurance policies and family physician information.²⁵

Relying on its decision in *Holger*, the Appellate Division concluded that a “claim” is “filed” when an insured’s submission of a PIP application **in the form** requested by the insurer is received by the insurer.²⁶ The Court explained that “an insurer should be entitled to rely on information it deems accurate and necessary for the proper processing of an application for PIP Benefits.”²⁷ The Court held that, “this information should be submitted in the form of a single document requested by the insured.”²⁸ To protect tortfeasors from dilatory conduct by errant insurance companies, such as allowing a claim to languish, the Court signaled that unreasonable delays in the processing of such paperwork may result in running of the statute of limitations.²⁹

Outreach

Staff sought comments from several knowledgeable individuals and organizations. These stakeholders included: the Civil Trial Division of the New Jersey State Bar Association; the Insurance Council of New Jersey; the New Jersey Defense Association; the New Jersey Association for Justice; an insurance defense attorney; and a personal injury attorney. No objection was received to the Commission’s recommended modifications set forth in the Appendix.

²⁰ *Id.*

²¹ 417 N.J. Super. 393, 396 (App. Div. 2011).

²² *Abdulai v. Casabona* 2016 WL 1334539 *1 (App. Div. 2016), citing *New Jersey Mfr. Ins. Grp. v. Holger Trucking Corp.* 417 N.J. Super. 393, 394-95 (App. Div. 2011).

²³ *Id.* at *3 (emphasis added).

²⁴ *Id.* at *4.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

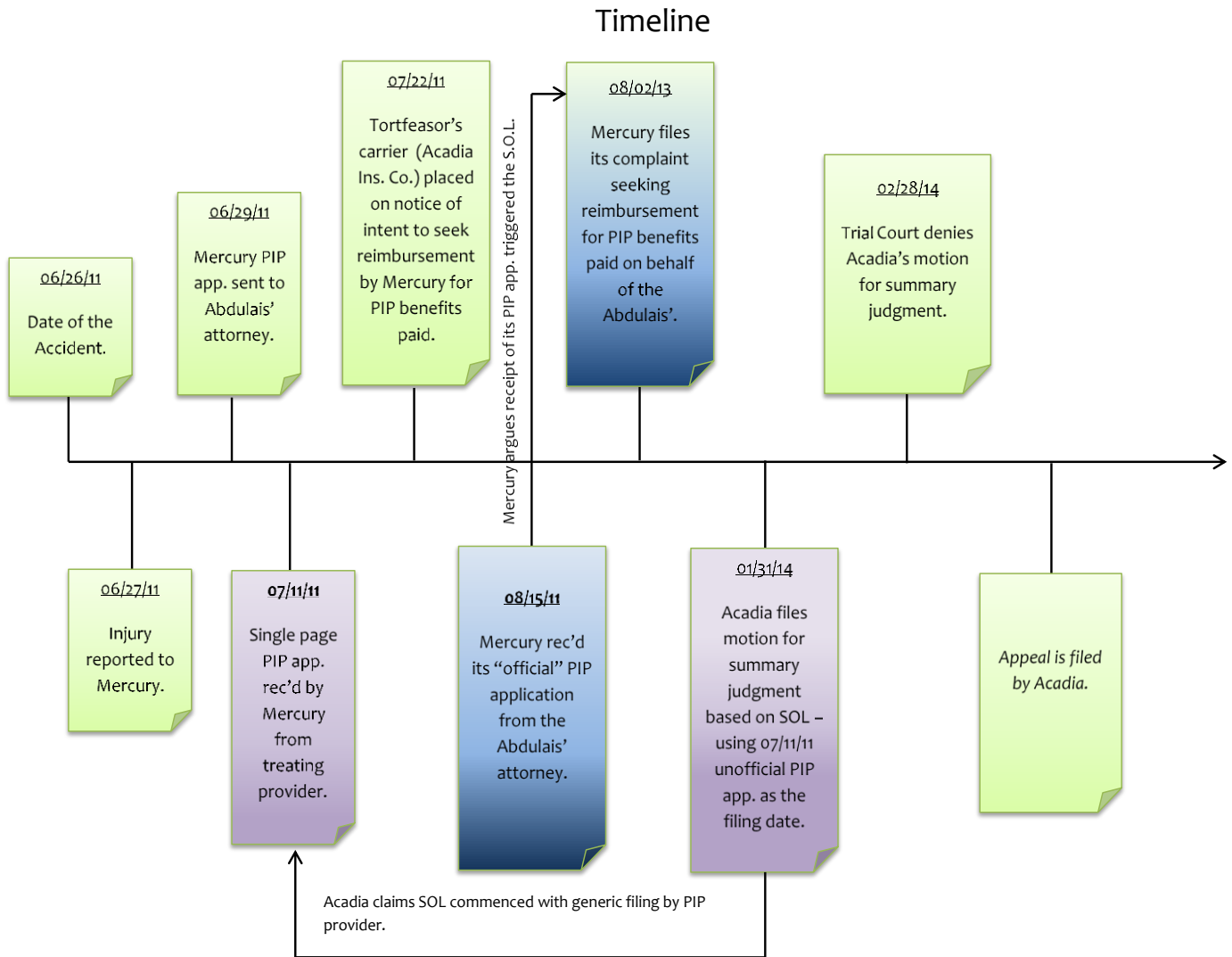
²⁸ *Id.*

²⁹ *Id.*

Conclusion

The proposed revisions, contained in the attached Appendix, are designed to enhance the clarity of N.J.S. 39:6A-9.1. The modifications provide that it is an insured's submission of a PIP application in the form requested by the insurer that triggers the statute of limitations and that such submissions should be submitted without an unreasonable delay or be barred by the statute of limitations.

Figure 1. Abdulai v. Casabona, 2016WL 1337539 (App. Div. 2016), Unreported.



Appendix

The proposed modifications to **N.J.S. 39:6A-9.1(a), recovery of personal injury protection benefits from tortfeasor**, (shown with ~~strike~~through, and underlining), follow:

a. As a result of an accident occurring within this State ~~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:

(1) 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

(2) although required did not maintain personal injury protection or medical expense benefits coverage at the time of the accident.

b. For purposes of subsection a.:

(1) “benefits” means:

(i) benefits pursuant to subsection a., b. or d. of section 13 of P.L.1983, c. 362 (C.39:6A-4.3),

(ii) 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),

(iii) medical expense benefits pursuant to section 4 of P.L.1998, c. 21 (C.39:6A-3.1) or

(iv) benefits pursuant to section 45 of P.L.2003, c. 89 (C.39:6A-3.3).

(2) “the claim” is the submission of the claim form or application requested by the insurer.

c. For purposes of this section, the document referred to in subsection b.(2) shall establish the accrual date for purposes of the statute of limitations.

~~b. d.~~ 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.

Comments

Section a. of N.J.S. 39:6A-9.1 has been redrafted to in the interest of clarity.

Section b. is new. The newly drafted subsection, b.(1) sets defines those benefits that were previously enumerated in the first sentence of section a. In addition, section b.(2) defines the term “claim” as discussed in *Abdulai v. Casabona*, 2016 WL 1334539 *3 (App. Div. 2016). See also *New Jersey Manufacturers Ins. Group v. Holger Trucking Corp.*, 417 N.J. Super. 393, 400 (App. Div. 2011) (holding that it is the submission of the PIP claim form that triggers the two-year limitation period contained in N.J.S. 39:6A-9.1).

In *Abdulai v. Casabona*, the Court cautioned insurers against subverting the intent of the statute and receiving an unfair advantage by allowing a claim to languish, despite actual notice and notification to the tortfeasor’s insurer, before belatedly requesting an official claim form from their insured. See *Abdulai v. Casabona*, 2016 WL 1334539 *4 (App. Div. 2016). Section c. reflects the language of the Court. See *Abdulai v. Casabona*, 2016 WL 1334539 *4 (App. Div. 2016).