

To: New Jersey Law Revision Commission
From: Melissa E. Sungela; Chris Mrakovcic
Re: Subrogation Rights under the Workers' Compensation Act and the Auto Insurance Cost Recovery Act
(New Jersey Transit Corp. v. Sanchez, 242 N.J. 78 (2020))
Date: September 04, 2020

MEMORANDUM

Executive Summary

In New Jersey, employers and workers' compensation carriers who have paid workers' compensation benefits to injured employees may assert subrogation claims pursuant to N.J.S. 34:15-40. The Auto Insurance Cost Recovery Act (AICRA) allows benefits paid to the employee under workers' compensation to be deducted from the insurer's personal injury protection (PIP) payments.¹ The statute, however, is silent regarding the ability of an employer to assert a subrogation claim if the employee elected the limitation-on-lawsuit option permitted by N.J.S. 39:6A-8(a) and sustained no permanent injury.

By contrast, the Workers' Compensation Act (WCA) authorizes employers and workers' compensation carriers to seek reimbursement from third-party tortfeasors or their insurance carriers.²

The interplay between the WCA provision N.J.S. 35:15-40 and N.J.S. 39:6A-6 (AICRA) on this matter has been litigated in several cases: *Lefkin v. Venturini* (1988)³, *Lambert v. Travelers Indem. Co. of Am.* (2016) consolidating three separate appeals⁴, *Talmadge v. Burn* (2016)⁵, and most recently *NJ Transit Corp. v. Sanchez* (2020).⁶

Statutes Considered

N.J.S. 34:15-40 subsection (f) provides, in pertinent part, that:

When an injured employee or his dependents fail within 1 year of the accident to either effect a settlement with the third person or his insurance carrier or institute proceedings for recovery of damages for his injuries and loss against the third person, **the employer or his insurance carrier**, 10 days after a written demand on the injured employee or his dependents, **can either effect a settlement with the third person or his insurance carrier or institute proceedings against the third person for the recovery of damages for the injuries and loss sustained by such injured employee or his dependents**⁷

¹ N.J.S. 39:6A-6.

² N.J.S. 34:15-40.

³ *Lefkin v. Venturini*, 229 N.J. Super. 1 (Super. Ct. 1988).

⁴ *Lambert v. Traveler's Indem. Co. of Am.*, 447 N.J. Super. 61, 66-67 (Super. Ct. 2016).

⁵ *Talmadge v. Burn*, 446 N.J. Super. 413 (Super. Ct. 2016).

⁶ *N.J. Transit Corp. v. Sanchez*, 242 N.J. 78 (2020).

⁷ N.J.S. 34:15-40(f) (emphasis added).

N.J.S. 36:6A-6 provides, in pertinent part:

If an insurer has paid those benefits and the insured is entitled to, but has failed to apply for, **workers' compensation** benefits or employees' temporary disability benefits, the insurer may immediately apply to the provider of **workers' compensation** benefits or of employees' temporary disability benefits for a reimbursement of any benefits pursuant to sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 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) it has paid.⁸

Background

An on-duty N.J. Transit employee was injured when his work vehicle was struck from the rear by a vehicle driven by Sanchez, the defendant.⁹ The employee was insured under a standard PIP automobile policy for which he elected the limitation-on-lawsuit option permitted by N.J.S. 39:6A-8(a).¹⁰ Nevertheless, the employee received workers' compensation benefits for his injuries. He sustained no permanent injuries and did not seek PIP benefits in connection with the accident.¹¹

N.J. Transit filed a complaint against the original tortfeasors seeking to “recoup workers’ compensation benefits pursuant to N.J.S.A. 34:15-40(f).”¹² Defendants argued that New Jersey’s no-fault insurance statute N.J.S.A. 39:6A-8 barred N.J. Transit’s subrogation claim because the injured employee elected the limitation-on-lawsuit option and did not suffer permanent injury.¹³

The trial court barred N.J. Transit’s subrogation action on the grounds that the employee sustained no unrecovered economic loss as defined in AICRA and that the subrogation claim would subvert the statutory goals.¹⁴ The Appellate Division disagreed.

The Appellate Division concurred with N.J. Transit that the workers’ compensation benefits paid to the employee related only to economic loss.¹⁵ It concluded that N.J. Transit’s subrogation action did not implicate the limitation-on-lawsuit threshold imposed by N.J.S. 39:6A-8(a).¹⁶ The Appellate Division held that because the employee’s economic loss was covered by his workers’ compensation benefits, and not by PIP benefits under his automotive policy, N.J.

⁸ N.J.S. 39:6A-6 (emphasis added).

⁹ *Sanchez*, 242 N.J. at 80.

¹⁰ *Id.*

¹¹ *Id.* at 81.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 82.

¹⁵ *Id.* at 83. Citing *N.J. Transit Corp. v. Sanchez*, 457 N.J. Super. 98, 112 (App. Div. 2018).

¹⁶ *Id.*

Transit's subrogation action did not run afoul of AICRA.¹⁷ It reversed the trial court's judgment and remanded for further proceedings.¹⁸

Analysis

The New Jersey Supreme Court affirmed the Appellate Division's judgment by an equally divided Court, holding that workers' compensation carriers have an absolute right to seek reimbursement from a tortfeasor for benefits the carrier has paid to an injured employee.¹⁹ The Supreme Court noted that when the Legislature enacted AICRA, it did not amend the WCA to eliminate subrogation.²⁰ Furthermore, the Court noted that the Legislature made no exceptions to the WCA's subrogation rights.²¹ In sum, the Court found that legislative intent was not to eliminate workers' compensation carriers' subrogation rights.²²

The dissenting opinion expressed the view that New Jersey's no-fault automobile insurance system makes the workers' compensation carrier primarily responsible for reimbursing economic losses.²³ The dissent interpreted "primary responsibility" to mean that when an injured driver's economic losses are "collectible" under a PIP policy, but paid by the employer's workers' compensation carrier, the no-fault system prohibits a workers' compensation subrogation action against the tortfeasor or the tortfeasor's insurance carrier.²⁴

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether or not it would be useful to modify the statutory language to make explicit the interrelationship between N.J.S. 39:6A and N.J.S. 34:15-40 pursuant to *N.J. Transit Corp. v. Sanchez*.

¹⁷ *Id.* Citing *N.J. Transit Corp. v. Sanchez*, 457 N.J. Super. 98, 113 (App. Div. 2018).

¹⁸ *Id.* at 84.

¹⁹ *Id.* at 83, 103. Citing *N.J. Transit Corp. v. Sanchez*, 457 N.J. Super. 98, 107 (App. Div. 2018).

²⁰ *Id.* at 94.

²¹ *Id.* at 101.

²² *Id.* at 103.

²³ *Id.* at 107.

²⁴ *Id.*