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GOVERNOR'S PRESS RELEASE ON SIGNING: No

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

CASE LAW:

Sponsor statement indicates that this bill is in response to the decision in Fernandez v. Nationwide Mutual Fire Ins. Co., 402 N.J. Super. 166 (App.Div. 2008)

LAW/KR

P.L.2011, CHAPTER 11, *approved January 28, 2011*

Senate, No. 191

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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

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

26 b. In the case of an accident occurring in this State involving
27 an insured tortfeasor, the determination as to whether an insurer,
28 health maintenance organization or governmental agency is legally
29 entitled to recover the amount of payments and the amount of
30 recovery, including the costs of processing benefit claims and
31 enforcing rights granted under this section, shall be made against
32 the insurer of the tortfeasor, and shall be by agreement of the
33 involved parties or, upon failing to agree, by arbitration. Any
34 recovery by an insurer, health maintenance organization or
35 governmental agency pursuant to this subsection shall be subject to
36 any claim against the insured tortfeasor's insurer by the injured
37 party and shall be paid only after satisfaction of that claim, up to the
38 limits of the insured tortfeasor's motor vehicle or other liability
39 insurance policy.

40 (cf: P.L.2003, c.89, s.53)

41

42 2. This act shall take effect immediately.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S191

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Concerns priority of claims against certain insured tortfeasors as

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between insurer paying PIP benefits and injured party.

SENATE, No. 191

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Concerns priority of claims against certain insured tortfeasors as between insurer paying PIP benefits and injured party.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S191 SCUTARI

2

1 AN ACT concerning recovery of personal injury protection benefits
2 under certain circumstances and amending P.L.1983, c.362
3 (C.39:6A-9.1).
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6 of New Jersey:
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8 1. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to
9 read as follows:

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

27 b. In the case of an accident occurring in this State involving
28 an insured tortfeasor, the determination as to whether an insurer,
29 health maintenance organization or governmental agency is legally
30 entitled to recover the amount of payments and the amount of
31 recovery, including the costs of processing benefit claims and
32 enforcing rights granted under this section, shall be made against
33 the insurer of the tortfeasor, and shall be by agreement of the
34 involved parties or, upon failing to agree, by arbitration. Any
35 recovery by an insurer, health maintenance organization or
36 governmental agency pursuant to this subsection shall be subject to
37 any claim against the insured tortfeasor's insurer by the injured
38 party and shall be paid only after satisfaction of that claim, up to the
39 limits of the insured tortfeasor's motor vehicle or other liability
40 insurance policy.

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STATEMENT

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This bill amends the statutory provision which permits an insurer, health maintenance organization or governmental agency which has paid personal injury protection (PIP) benefits under a private passenger automobile insurance policy to recover the amount of those benefits paid from the tortfeasor, or the tortfeasor's insurer. The amendment made by the bill provides 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.

This bill is in response to the decision in Fernandez v. Nationwide Mutual Fire Ins. Co., 402 N.J.Super. 166 (App. Div. 2008), in which the Appellate Division held that under the statute at issue, the claim of an insurer which has paid PIP benefits has priority over the claim of that insurer's insured who seeks recovery from the tortfeasor's liability insurance for unpaid medical expenses, pain, suffering, or other damages caused by the accident. The amendment made by this bill would reverse that outcome.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 191

STATE OF NEW JERSEY

DATED: OCTOBER 7, 2010

The Senate Commerce Committee reports favorably Senate Bill No. 191.

This bill amends the statutory provision which permits an insurer, health maintenance organization or governmental agency which has paid personal injury protection (PIP) benefits under a private passenger automobile insurance policy to recover the amount of those benefits paid from the tortfeasor, or the tortfeasor's insurer. The amendment made by the bill provides 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.

This bill is in response to the decision in 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 of New Jersey affirmed, that under the statute at issue, the claim of an insurer which has paid PIP benefits has priority over the claim of that insurer's insured who seeks recovery from the tortfeasor's liability insurance for unpaid medical expenses, pain, suffering, or other damages caused by the accident. The amendment made by this bill would reverse that outcome.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

SENATE, No. 191

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2010

The Assembly Financial Institutions and Insurance Committee reports favorably Senate Bill No. 191.

This bill amends the statutory provision which permits an insurer, health maintenance organization or governmental agency which has paid personal injury protection (PIP) benefits under a private passenger automobile insurance policy to recover the amount of those benefits paid from the tortfeasor, or the tortfeasor's insurer. The amendment made by the bill provides 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.

This bill is in response to the decision in 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 of New Jersey affirmed, that under the statute at issue, the claim of an insurer which has paid PIP benefits has priority over the claim of that insurer's insured who seeks recovery from the tortfeasor's liability insurance for unpaid medical expenses, pain, suffering, or other damages caused by the accident. The amendment made by this bill would reverse that outcome.

ASSEMBLY, No. 793

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman JON M. BRAMNICK

District 21 (Essex, Morris, Somerset and Union)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

SYNOPSIS

Concerns priority of claims against certain insured tortfeasors as between insurer paying PIP benefits and injured party.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 12/10/2010)

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18 years of the filing of the claim, have the right to recover the amount
19 of payments from any tortfeasor who was not, at the time of the
20 accident, required to maintain personal injury protection or medical
21 expense benefits coverage, other than for pedestrians, under the
22 laws of this State, including personal injury protection coverage
23 required to be provided in accordance with section 18 of P.L.1985,
24 c.520 (C.17:28-1.4), or although required did not maintain personal
25 injury protection or medical expense benefits coverage at the time
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27 b. In the case of an accident occurring in this State involving an
28 insured tortfeasor, the determination as to whether an insurer, health
29 maintenance organization or governmental agency is legally entitled
30 to recover the amount of payments and the amount of recovery,
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33 tortfeasor, and shall be by agreement of the involved parties or,
34 upon failing to agree, by arbitration. Any recovery by an insurer,
35 health maintenance organization or governmental agency pursuant
36 to this subsection shall be subject to any claim against the insured
37 tortfeasor's insurer by the injured party and shall be paid only after
38 satisfaction of that claim, up to the limits of the insured tortfeasor's
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This bill is in response to the decision in Fernandez v. Nationwide Mutual Fire Ins. Co., 402 N.J.Super. 166 (App. Div. 2008), in which the Appellate Division held that under the statute at issue, the claim of an insurer which has paid PIP benefits has priority over the claim of that insurer's insured who seeks recovery from the tortfeasor's liability insurance for unpaid medical expenses, pain, suffering, or other damages caused by the accident. The amendment made by this bill would reverse that outcome.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 793

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2010

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 793.

This bill amends the statutory provision which permits an insurer, health maintenance organization or governmental agency which has paid personal injury protection (PIP) benefits under a private passenger automobile insurance policy to recover the amount of those benefits paid from the tortfeasor, or the tortfeasor's insurer. The amendment made by the bill provides 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.

This bill is in response to the decision in 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 of New Jersey affirmed, that under the statute at issue, the claim of an insurer which has paid PIP benefits has priority over the claim of that insurer's insured who seeks recovery from the tortfeasor's liability insurance for unpaid medical expenses, pain, suffering, or other damages caused by the accident. The amendment made by this bill would reverse that outcome.

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