



DOMESTIC/FOREIGN INSURERS BULLETIN NO. 82

TO: ALL INSURANCE CARRIERS WRITING AUTOMOBILE POLICIES IN DELAWARE

RE: PIP Subrogation Claims

DATED: December 3, 2015

This Bulletin is to remind all insurers writing the coverages required under 21 *Del. C.* § 2118 that broad release language in settlement agreements which technically preclude a Personal Injury Protection (“PIP”) Carrier from pursuing its subrogation claim are unenforceable pursuant to 21 *Del. C.* § 2118(g) and Delaware case law. 21 *Del. C.* § 2118(g) provides that:

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 provision 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. Supr. 1996 Del. LEXIS 216; *see also, Penninsula 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.

Despite this clear statutory and court-ordered mandate, it has come to the Department’s attention that automobile insurance carriers and adjusters in Delaware are disregarding both the statute and Delaware case law by including broad release language in settlement agreements in an attempt to circumvent PIP subrogation claims. Such language can have the effect of driving up costs of litigation and, ultimately, insurance costs for consumers. If the Department determines there exists a pattern or practice of insurers including such broad release language in their settlement agreements in an attempt to circumvent a PIP subrogation claim or failing 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.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



Karen Weldin Stewart, CIR-ML
Delaware Insurance Commissioner