

It has become abundantly clear that the issue of whether and when PIP is reimbursed in an uninsured (“UM”) or an underinsured motorist (“UIM”) claim is not clear at all. Whether and when PIP may be reimbursed in these types of cases is governed by two statutes, ORS 742.542 and ORS 742.544. How can something seemingly so “simple” as PIP reimbursement be so difficult to apply? Perhaps the language of the statutes and the perplexing omission of any reference to UM benefits in ORS 742.544 is to blame. Ultimately, the key is to distinguish whether the claim in which the PIP carrier seeks reimbursement is a UM claim versus a UIM claim.

1. Uninsured Motorist Scenario

In an uninsured motorist claim,

“Payment by a motor vehicle liability insurer of personal injury protection benefits for its own insured shall be applied in reduction of the amount of damages that the insured may be entitled to recover from the insurer under uninsured or underinsured motorist coverage for the same accident but may not be applied in reduction of the uninsured motorist coverage policy limits.”

ORS 742.542. This means that UM limits cannot be reduced by the amount of PIP paid. Yokum v. Farmers Ins. Co. of Ore., 117 Or. App. 546, 549 (1993). Under certain circumstances, when an insured is injured by an uninsured motorist, the UM benefits and PIP benefits can essentially be “stacked.” Id. fn1. In applying this statute, you must first determine the total value of the insured’s claim (total economic plus non-economic damages). After determining the value of the claim, the amount of PIP that was paid is applied to reduce the total value of the claim. This “net

PIP “Reimbursement” Fact or Fiction?

— by Julie E. Dutton

value”, subject to a maximum of the UM policy limit, is what determines the amount of UM benefits the insured is entitled to recover. The following are two examples of how this statute works:

Example 1: Your insured, “Joe,” is injured in a hit and run accident. He has a UM policy limit of \$25,000. He receives \$10,000 in PIP benefits. Assume that his total damages, economic plus non-economic, come to \$35,000. In this example, the amount PIP has paid would be subtracted from Joe’s total damages (\$35,000 - \$10,000), leaving a \$25,000 damage claim. Therefore, Joe is entitled to recover the entire \$25,000 policy limit. The UM policy limit is not reduced by the amount PIP has paid.

Example 2: Joe is, again, in a hit and run accident. This time, however, he has a UM policy limit of \$50,000. He receives \$10,000 in PIP benefits. His total damages, again, economic plus non-economic, come to \$35,000. In this example, again, PIP is deducted from Joe’s total damages (\$35,000 - \$10,000), leaving a \$25,000 damage claim. Therefore, Joe is again entitled to recover \$25,000 pursuant to his UM policy.

2. Underinsured Motorist Scenario

Underinsured motorist policy limits equal uninsured motorist limits less the amount recovered from the tortfeasor’s insurer. Yokum, 117 Or. App. at 549. Whether, and when, PIP may be reimbursed from a liability settlement underlying a UIM claim is governed by ORS 742.544. That statute provides that a PIP provider:

“...shall be reimbursed for personal injury protection payments made on behalf of any person only to the extent that the total amount of benefits

(Continued on next page)

paid exceeds the economic damages as defined in ORS 31.710 suffered by that person. As used in this section, “total amount of benefits” means the amount of money recovered by a person from:

- (a) Applicable underinsured motorist benefits described in ORS 742.502(2);
- (b) Liability insurance coverage available to the person receiving the personal injury protection benefits from other parties to the accident;
- (c) Personal injury protection payments; and
- (d) Any other payments by or on behalf of the party whose fault caused the damages.”

Thus, the PIP carrier is entitled to recover its PIP from the liability settlement only if the amounts that the benefits the insured receives pursuant to subsections (a) + (b) + (c) + (d) are greater than the insured’s total economic damages. Although this statute is one of the most obtuse statues ever written, what it appears to mean, in practical application, is to the extent the PIP insured would not recover all of his or her economic damages from the liability settlement if PIP were reimbursed, PIP is not reimbursed. In other words, the insured’s economic damages take priority over PIP reimbursement.

Further, contrary to the application of ORS 742.542 as discussed above, the total value of the insured’s claim is not a part of the equation – i.e., the insured’s non-economic damages are irrelevant. Accordingly, the preliminary question that must be answered before determining whether the PIP carrier would be entitled to reimbursement is whether the total amount that the claimant “received, including the settlement that she received from defen-

dant, exceeded her economic damages and, if so, by what amount.” Horlacher v. Mid Century Ins., 143 Or. App. 564, 567 (1996). The following are two more examples involving your insured, Joe:

Example 3: Joe is seriously injured in an accident by a driver who had a \$25,000 policy limit. Joe’s policy has a \$100,000 UIM limit. Assume Joe’s total damages include \$50,000 in economic damages and \$75,000 in non-economic damages. The tortfeasor driver’s insurance company pays Joe the \$25,000 policy limit. This leaves underinsured benefits in the amount of \$75,000, which is also paid to Joe. Additionally, Joe previously received \$20,000 in PIP benefits. The tortfeasor driver does not pay Joe any additional sums of money. Accordingly, the “total amount of benefits” that Joe receives is \$120,000. This amount is greater than Joe’s total economic damages of \$50,000. Accordingly, under this scenario, the PIP carrier is entitled to be reimbursed the \$20,000 it paid because after reimbursement, the total amount Joe receives is still greater than his economic damages. Looking at this somewhat differently, \$95,000 in UIM benefits are then owed, which raises the question as to why the PIP/UIM carrier cares about reimbursement in this example, as reimbursement just reduces the available credit from UIM coverage.

Example 4: Joe is again seriously injured in an accident by a driver who had a \$25,000 policy limit. Joe’s policy has a \$50,000 UIM limit. Joe’s total damages include \$65,000 in economic damages and \$100,000 in non-economic damages. The tortfeasor driver’s insurance company pays Joe the \$25,000 policy limit. This leaves underinsured benefits in the amount of \$25,000, which is also paid to Joe. Additionally, Joe previously received \$10,000 in PIP benefits. The tortfeasor driver does not pay Joe any additional sums of money. Accordingly, the “total amount of benefits” that Joe receives is \$60,000. This amount is not greater than Joe’s economic

damages. Therefore, under this scenario, the PIP carrier is not entitled to be reimbursed the \$10,000 it paid. *See, e.g., North Pacific Ins. Co. v. Hamilton*, 153 Or. App. 332 (1998)(reversed on other grounds).

As you can see, the two statutes operate from two different premises. One is concerned with the total value of the claim, while the other is concerned with the amount of economic damages in relation to the benefits received. One can speculate as to why the Legislature decided to potentially permit PIP reimbursement in all but UM

claims. Perhaps they feel it is fair to allow a UM insured to stack UM and PIP benefits because there is no underlying tortfeasor contributing to the insured's recovery; and also fair to allow a PIP carrier to receive reimbursement only after the insured has received benefits in an amount that makes him economically whole. Speculation aside, we will not know the answer to this question if or until the Legislature decides to take another whack at this whacky language. ❖

— If you have any questions, please feel free to contact any of the attorneys at Lachenmeier, Enloe, Rall & Heinson by phone at (503) 768-9600.