

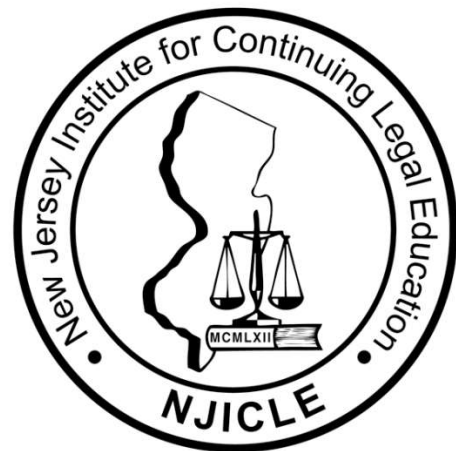
KEYS TO HANDLING THE PIP CASE: RULES, COVERAGE, FILE PREPARATION AND CASE PRESENTATION

2023 Seminar Material

M0132.23

New Jersey Institute for
Continuing Legal Education

A Division of the State Bar Association
NJICLE.com



This page intentionally left blank

KEYS TO HANDLING THE PIP CASE: RULES, COVERAGE, FILE PREPARATION AND CASE PRESENTATION

Moderator/Speaker

Nicole R. Cassata, Esq.

*Chasan Lamparello Mallon & Cappuzzo,
P.C. (Secaucus)*

Jennifer Remington-Knodel, Esq.

*Dispute Resolution Professional
(Totowa)*

Speakers

David B. Angeluzzi, Esq.

*Chasan Lamparello Mallon & Cappuzzo,
P.C. (Secaucus)*

Jeffrey A. Rizika, Esq.

*Javerbaum Wurgaft Hicks Kahn
Wikstrom & Sinins, P.C. (Roseland)*

Colleen R. Buontempo, Esq.

*Brach Eichler LLC
(Roseland)*

Mark T. Connell, Esq.

*Forthright
(Somerset)*

Jack Fannan, Esq.

*Dispute Resolution Professional
(Avon-by-the-Sea)*

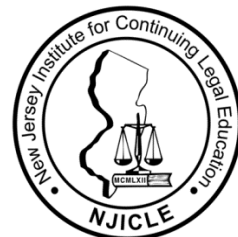
Daniel Leonart, Esq.

*Joseph M. Ariyan, Esq., LLC
(Paramus)*

Robert A. Maren, Esq.

*Vella and Maren
(Iselin)*

M0132.23



© 2023 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to NJICLE, a Division of the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520.

Table of Contents

	<u>Page</u>
Keys to Handling the PIP Case: Personal Injury Claim or Auto Injury Claim Under PIP – Understanding the Difference Jeffrey A. Rizika, Esq.	1
Issues Between Automobile Negligence Cases and Non-Automobile Negligence Cases	3
Who Pays Medical Bills?	3
Liability	4
Property Damage (PD)	5
Rideshare Vehicles – <i>N.J.S.A. 39:5H-10</i>	5
PIP Arbitrations and Collateral Estoppel	5
Keys to Handling the PIP Case: Rules, Coding, File Preparation and Case Presentation From the Respondent’s Perspective PowerPoint Presentation David Angeluzzi	7
Effectively Preparing, Labeling and Uploading Electronic Arbitration Submissions PowerPoint Presentation Robert A. Maren, Esq.	33
Keys to Handling the PIP Case “Tips from the Arbitrators” PowerPoint Presentation Jennifer Remington-Knodel, Esq. Jack Fannan, Esq.	59
About the Panelists...	77

This page intentionally left blank

**KEYS TO HANDLING THE PIP CASE:
PERSONAL INJURY CLAIM OR AUTO
INJURY CLAIM UNDER PIP-
UNDERSTANDING THE DIFFERENCE**

JEFFREY A. RIZIKA, ESQ

973-379-4200 F-973-39-7872
Jrizika@lawjw.com

This page intentionally left blank

ISSUES BETWEEN AUTOMOBILE NEGLIGENCE CASES AND NON-AUTOMOBILE NEGLIGENCE CASES

WHO PAYS MEDICAL BILLS?

- PIP Coverage – only applies if plaintiff is in an automobile or is a pedestrian (not if in a truck; some buses apply; no taxi's or rideshare vehicles)
 - Declarations Page
 - Standard policy, Basic policy or Special policy (dollar-a day policy)?
 - Basic policy has \$15,000 PIP and optional liability coverage of \$10,000 (N.J.S.A. 39:6A-3,1)
 - Special Policy has emergency PIP only and no liability coverage (N.J.S.A. 39:6A-3.3)
 - Both have \$250,000 of PIP for permanent or significant brain injury, spinal cord injury or disfigurement or for medically necessary treatment of other permanent or significant injuries rendered at a trauma center or acute care hospital immediately following the accident and until the patient is stable, no longer requires critical care and can be safely discharged or transferred to another facility in the judgment of the attending physician.
 - Limitation on Lawsuit (verbal threshold/tort threshold/lawsuit threshold)
 - UM/UIM
 - PIP Coverage
 - Health insurance or PIP Primary
 - Amount of Coverage
 - Check with client
 - Coverage Selection Form
 - NJS A 39:6A-4.3
 - Is coverage affirmatively selected?
 - If not, default to standard coverage of \$250,000 of PIP (standard policies only)
 - Secondary Coverage
 - Medicare
 - Medicaid
 - ERISA Policy
 - Get the plan document
 - Bills exceed PIP coverage
 - Haines amendment
 - N.J.S.A. 39:6A-12

- August 1, 2019 – bills not covered by PIP from motor vehicle accidents on or after are subject to NJ fee schedule (N.J.A.C.11:3-29.6)
- Bills not covered by PIP from motor vehicle accidents before subject to usual, customary and reasonable (UCR)
 - N.J.S.A. 39:6A-12 does not apply to:
 - Med Pay
 - Passengers in ride share vehicles
 - Drivers and passengers in non-automobiles (with some motor bus exceptions, see N.J.S.A. 17:28-1.5).
 - N.J.S.A. 39:6A-12 applies to:
 - Health insurance deductible and co-payment
 - Health insurance liens
 - Basis and dollar a day policy's

LIABILITY

- Liability Coverage
 - In New Jersey, insurers previously were not required to disclose liability policy limits prior to filing suit
 - Financial disclosure bill signed into law
 - Insurer must disclose their insured's policy limit within 30 days of receiving a written request for same from an attorney
 - A request for disclosure of policy limits shall be in writing 16 and shall include:
 - (1) a statement that the attorney represents an individual who has suffered bodily injury or death alleged to be caused by a motor vehicle accident with an insured under a private passenger automobile insurance policy issued by the insurer;
 - (2) the name and last known address of the insured;
 - (3) the date and approximate time of the motor vehicle accident;
 - (4) a copy of the accident report, if available, relating to the MVA;
 - (5) a statement from the claimant, or an attorney representing the claimant, providing insurance information, which shall include the claimant's:
 - (a) insurer, policy number, and policyholder name;
 - (b) tort threshold selection; and
 - (c) PIP coverage limit
 - Type of vehicle of the defendant
 - Truck
 - Bus
 - Rideshare vehicle

PROPERTY DAMAGE (PD)

- Who pays for damage to car?
 - Collision claim vs. claim against defendant
 - Liability issue
 - Amount of coverage
 - Deductible
 - Total loss
 - Payoff of financing agreement
 - GAP Coverage

RIDESHARE VEHICLES - N.J.S.A. 39:5H-10

- Coverage available depends upon whether you are the driver or passenger
- If driver is logged on to the transportation network company's digital network and is available to provide a prearranged ride but not yet providing ride:
 - Liability coverage of at least \$50,000/\$100,000 and \$25,000 PD
 - Standard PIP for driver only
 - UM/UIM as required by N.J.S.A. 17:28-1.1 (minimum \$15k/\$30k)
- Is driver is providing a prearranged ride
 - Liability coverage of at least \$1,500,000
 - Med pay of at least \$10,000 for driver only (No PIP or med pay coverage for passengers)
 - UM/UIM of at least \$1,500,000

PIP ARBITRATIONS AND COLLATERAL ESTOPPEL

- The effect of PIP Arbitrations on your bodily injury claim
 - Habik vs. Liberty Mutual Fire Insurance Company, 320 N.J. Super. 244 (App. Div.) certif. den. 161 N.J. 149 (1999)
 - If Plaintiff seeks relief from PIP arbitration and arbitrator rules not causally related, plaintiff is collaterally estopped from arguing causation in 3rd party negligence trial
 - However, if provider sought the relief from the PIP arbitration, collateral estoppel does not apply to plaintiff in its 3rd party case as plaintiff did not have an opportunity to argue the issue.

This page intentionally left blank

KEYS TO HANDLING THE PIP CASE: RULES, CODING, FILE PREPARATION AND CASE PRESENTATION

FROM THE RESPONDENT'S PERSPECTIVE

David Angeluzzi

Documents needed to File PIP Arbitration

- Claimant files Demand for Arbitration
 - ▣ Demand found on Forthright website- www.nj-no-fault.com
 - ▣ Assignment of Benefits- valid? If not, claimant has no standing to proceed
 - ▣ Arbitration Summary- breakdown of outstanding bills/dates of service/issues as known by claimant
 - ▣ Bills
- Possible Consolidation
 - ▣ Are there any files pending which include the same dates of service, issues and providers. (i.e., surgeon, surgery center and anesthesia)

Consolidation

- Forthright Rule 9 allows CONSOLIDATION :
 - ▣ By consent – all parties agree
 - ▣ By party request (DRP has to issue a ruling)
 - Requesting party must clearly set forth the basis for the request (interdependent cases, common issues of coverage, eligibility, etc.) and specific facts that support the request
 - ▣ Administrative Consolidation – Forthright will endeavor to identify interdependent cases already pending and coordinate accordingly

Respondent's Intake

- Dependant upon what the Claimant has attached to the Demand
 - ▣ If insufficient info supplied, check with carrier for precerts and appeals.
- Review Assignment of Benefits- valid? If not, claimant has no standing to proceed
- Compare Bills with EOBs/ Payment ledger- determine what is being disputed/outstanding and begin to draft defenses
 - ▣ On payment disputes, consider whether your carrier has access to professional code reviewers for possible reports.
- Possible Consolidation
- First Receipt of Bill

Issue Spotting

- Are defenses related to DPRP ?
- Coverage Issues/Policy Limits/Statute of Limitations
- Bill Review/Coding
- UCR
- PPO
- Medical Necessity
- FIRST RECEIPT OF BILL
 - ▣ If the first time your client received the claimant's bill was with the Demand for Arbitration, and there is no other viable defense:
 - ▣ The carrier has 60 days to pay the bill per N.J.S.A. 39:6A-5(g)
 - If so, claimant's counsel should not recover fees or costs
 - ▣ Case might come down to a battle of Affidavits...
 - ▣ What proofs does the Claimant have to document prior service of the bill
 - ▣ Denial EOB (dated before the Demand was filed) will sink this defense...

Decision Point Review Plan Defenses

- ❑ Voluntary Networks (N.J.A.C. 11:3-4.8)
- ❑ Non-cooperate with IME (failure to attend- termination of benefits)
- ❑ Internal Appeals Process (N.J.A.C. 11:3-4.7(B))
- ❑ LOD- 50% copayment (N.J.A.C. 11:3-4.4(f))
- ❑ Pre-cert penalties (N.J.A.C. 11:3-4.4(e))
- ❑ COVERAGE / ELIGIBILITY
- ❑ Possible EUO
- ❑ PLIGA?
- ❑ Resident relative
- ❑ Other insurance
- ❑ Out of state policy

- ❑ What proofs do you have / need to document residency?
 - ❑ Passport, driver's license, tax records, paycheck, leases, utility bills

Policy Exhaustion

- What are the insured's policy limits?
- How much has been paid out?
- If exhausted must provide copy of Insured's Declaration Page, Coverage Selection Sheet and Payment ledger
- If dealing with a BASIC policy, does the medical treatment qualify for additional benefits pursuant to N.J.A.C. 39:6A-3.1(a)

Basic Policies

- “Basic” policies (N.J.S.A. 39:6A-3.1) carry a \$15,000 PIP limit which applies equally to the insured, resident relatives and strangers alike. The only recognized exception to the \$15,000 limits is to increase the limit up to \$250,000 in cases where the injury involves (1) permanent or significant brain injury, spinal cord injury or disfigurement; or (2) permanent or significant injuries treated at a trauma center or acute care facility immediately following the accident and until the patient is stable. No distinction is made within the statute between insureds, their relatives and strangers to the “basic” policy.

Standard Policies

- “Standard” policies (N.J.S.A. 39:6A-4 et. seq.) can carry PIP limits in amounts from \$15,000, \$50,000, \$75,000, \$150,000 or \$250,000 – depending on the amount selected by the insured. The same exception exists to increase lower limits to \$250,000 in cases of significant brain / spinal cord injuries and trauma / acute care immediately following the accident.
- The statute makes a significant distinction for strangers:
- “ An option elected by the named insured in accordance with this section shall apply only to the named insured and any resident relative in the named insured’s household who is not a named insured under another automobile insurance policy, and not to any other person eligible for personal injury protection benefits required to be provided in accordance with N.J.S.A. 39:6A-4.” N.J.S.A. 39:6A-4.3(f)”
- Accordingly, the stranger who is eligible to receive PIP benefits under a “standard” policy carrying limits lower than \$250,000, gets the \$250,000 PIP limit anyway

Health Insurance Primary

- Is the insured covered by a health insurance primary policy?
 - Did the insured have health insurance at the time of the loss?
 - Did the Claimant submit the bill the health carrier prior to submission to PIP?
 - Did the Claimant receive an EOB from the health carrier?
 - Is it an actual disposition on the bill or is it a request for more information?
 - Denial due to failure to pre-authorize service?
 - (DISPUTED) – Did the Claimant file an appeal to payment (or non-payment) issued by the health carrier?
 - Palisades Insurance Company v. Horizon Blue Cross Blue Shied of New Jersey, A-2830-19 (App. Div. 2021)
 - (DISPUTED) – Who has the right to invoke the \$750.00 co-payment penalty for failure to maintain health insurance?
 - Are other factual circumstances akin to not having health insurance? Failure to follow health carrier guidelines equivalent to not having health insurance?

Policy Limit Cases

- What do you need?
- Coverage Selection Form / Renewal Form
- PIP Ledger
- Policy Dec Page
- EOBs
- Open MRI of Rochelle Park a/s/o Hernandez v. Mercury - App Div said that DRPs cannot reform a policy
- While “PIP disputes” include interpretation of the insurance contract, it does not extend to reformation of the policy

Statute Of Limitations

- When was the date of the motor vehicle accident
- Have any benefits been paid out, if so when? Last payment?
- If no payments have been made and Demand for Arbitration was filed more than 2 years after the mva- Statute of Limitations has been exhausted
- If payments have been made, check ledger to see last payment-if Demand for Arbitration was filed more than 2 years after the last payment was made on Ledger, Statute of Limitations has expired

Pre-certification Penalty

- Diagnostic Testing (MRIs, EMGs, CATs. etc...), surgeries, PT / Chiro / Acupuncture treatment plans, transportation services; prescriptions over \$50; Durable Medical Equipment
 - ▣ Not so if performed or prescribed within 10 days of accident
 - ▣ **Failure to request = 50% penalty**

Coding Issue

- Similar Services
- If code is not listed on Fee Schedule (pre and post 8/10/09) look to see if similar code on fee schedule
- Cobo directs us to look at fee schedule for “similar services”
 - ▣ (Disputed) – Can you combine multiple services to create a similar service?
- Multiple Reduction Procedure Formula (N.J.A.C. 11:3-29.4(f))
- DOBI clarified – MRF applies to all CPT Codes 10000-69999, except codes listed as “each additional” and “list separately in addition to the primary procedure”

HOSF & ASC Reimbursement

- Hospital Outpatient Surgical Facility (HOSF) Fees
 - Exhibit 7
 - Became effective 1/4/13 and provides a Fee Schedule for Hospitals
 - Applies to outpatient procedures (i.e. 62310- epidural injection)
 - NJAC 11:3-29.5(a)1-8 & (b)
 - ...The ASC Facility fees includes services that would be covered if the services were furnished in a hospital or an inpatient or outpatient basis.
 - Provides a list of procedures that are not reimbursable per the HOSF. For example, a Hospital cannot receive reimbursement for the recovery room as the charge is “bundled” into the reimbursement for the surgical procedure. (NJAC 11:3-29.5(a)1-8
 - NJAC 11:3-29.5(b) applies to hospitals.
 - If ASC amount not listed for CPT code; not reimbursable (*New Jersey Manufacturers Insurance Company v. Specialty Surgical Center of North Brunswick a/s/o Claire Fiore and Surgicare Surgical Associates of Fair Lawn a/s/o Martino Chizzoniti*, 202 A.3d 672 (N.J., App. Div. 2019); see also *Endo Surgi Center a/s/o Bernadette Harper v. NJM Insurance Group*, 209 A.3d 904 (N.J. App. Div. 2019)

PPO

- Privity of contract
 - ▣ Need to provide contracts from Provider to PPO vendor to 3rd-Party Administrator to Carrier
- PPO fee schedule
 - ▣ Must be read consistent with NJ Fee Schedule – can't compel payment above NJFS amounts
- Were the bills paid on time per PPO terms and paid correctly?
 - ▣ If so, there may be a contractual time limitation on filing a dispute
- Seaview Ortho case

DOBI'S Appeals Process

- 11:3-4.7B(b) Insurers shall only require a one-level appeal procedure for each appealed issue before arbitration. That is, each issue shall only be required to receive one internal appeal review by the insurer prior to arbitration. An appeal of the denial of a medical procedure, treatment, diagnostic test, other service, and/or durable medical equipment on the grounds of medical necessity is a different issue than an appeal of what the insurer should reimburse the provider for that same service.

Appeals Process

- This means that the same treatment may result in two different appeals...
- Once for medical necessity

- Again for UCR (if medical necessity denial is overturned and/ or the bill gets paid by the carrier)

Appeals Process

- 11:3-4.7B(c) All appeals shall be initiated using the forms established by the Department by Order in accordance with N.J.A.C. 11:3-4.7(d) and posted on the Department's website.

- On Oct. 26, 2016, DOBI published a Synopsis and Explanation of Internal Appeal Forms.

- Pre-Service Appeal Forms and Post Service Appeal Forms – on DOBI Website

Appeals Process

- 11:3-4.7B(d) The appeal forms and any supporting documentation shall be submitted by the provider to the address and/or fax number designated for appeals in the insurer's DPR Plan. Pursuant to N.J.A.C. 11:1-47, insurers may permit electronic filing of appeals by providing the process for electronic filing in its DPR Plan.
- Nothing new here - service is accomplished via mail, fax or electronic filing (if permitted by carrier)

Appeals Process

- 11:3-4.7B(e) There shall be two types of internal appeals:
- 1. Pre-service: Appeals of decision point review and/or precertification denials or modifications prior to the performance or issuance of the requested medical procedure, treatment, diagnostic test, other service and/or durable medical equipment (collectively known as “services”); and
- 2. Post-service: Appeals subsequent to the performance or issuance of the services.
- DOBI’s comment responses indicate that “other services” includes prescription drugs and compound medications.

Appeals Process

- 11:3-4.7B(f) A pre-service appeal shall be submitted no later than 30 days after receipt of a written denial or modification of requested services.
 - ▣ Carrier must respond within 14 days
- 11:3-4.7B(g) A post-service appeal shall be submitted at least 45 days prior to initiating alternate dispute resolution pursuant to N.J.A.C. 11:3-5 or filing an action in Superior Court.
 - ▣ Carrier has no later than 30 days to respond to a Post Service Appeal

Summary of Appeals Process

- Pre-service appeals – intended for DPR / Precertification denials prior to treatment, testing DME, etc...
- Due no later than 30 days from denial
- Carrier decision due 14 days from receipt of appeal
- Post-service appeals – intended for appeals after treatment (etc) is rendered. UCR, PPO, NCCI, etc...
- Due 45 days before filing a Demand or Lawsuit
- Carrier's decision due within 30 days from receipt

Deemer Issue

- Critical question is whether the insured vehicle was involved in the subject accident. If so, Deemer applies to increase PIP benefits to NJ limits
- i.e. an out-of-state insured is struck as a pedestrian in NJ – they only get the PIP / med-pay limits of their home-state policy. Not NJ limits
- See Forthright AWARDS #, 1960541;177041; and 2002201

Lawsuits

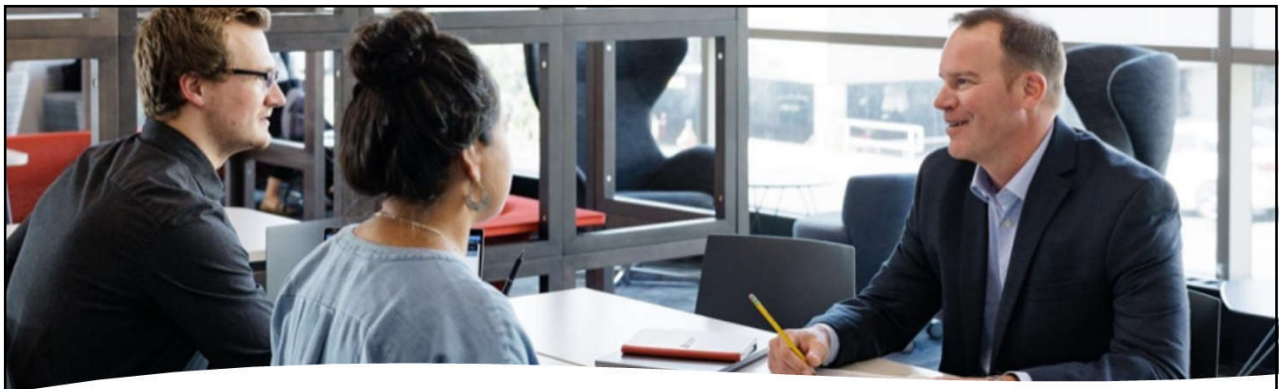
- Motion to Transfer to Forthright?
- If denying coverage, then you can't apply mandatory arb clause in contract
- Answer & Discovery- request outstanding medical bills
 - Requests for Admissions – Eligibility
- Possible Stipulation of Dismissal
- Recent Appellate Division case determined that Superior Court can remand back to Forthright for further determination (See Kimba v. Allstate Insurance Company of NJ)

This page intentionally left blank

EFFECTIVELY PREPARING, LABELING AND UPLOADING ELECTRONIC ARBITRATION SUBMISSIONS

Robert A. Maren, Esq.

New Jersey Staff Counsel for the Progressive Group of Insurance
Companies

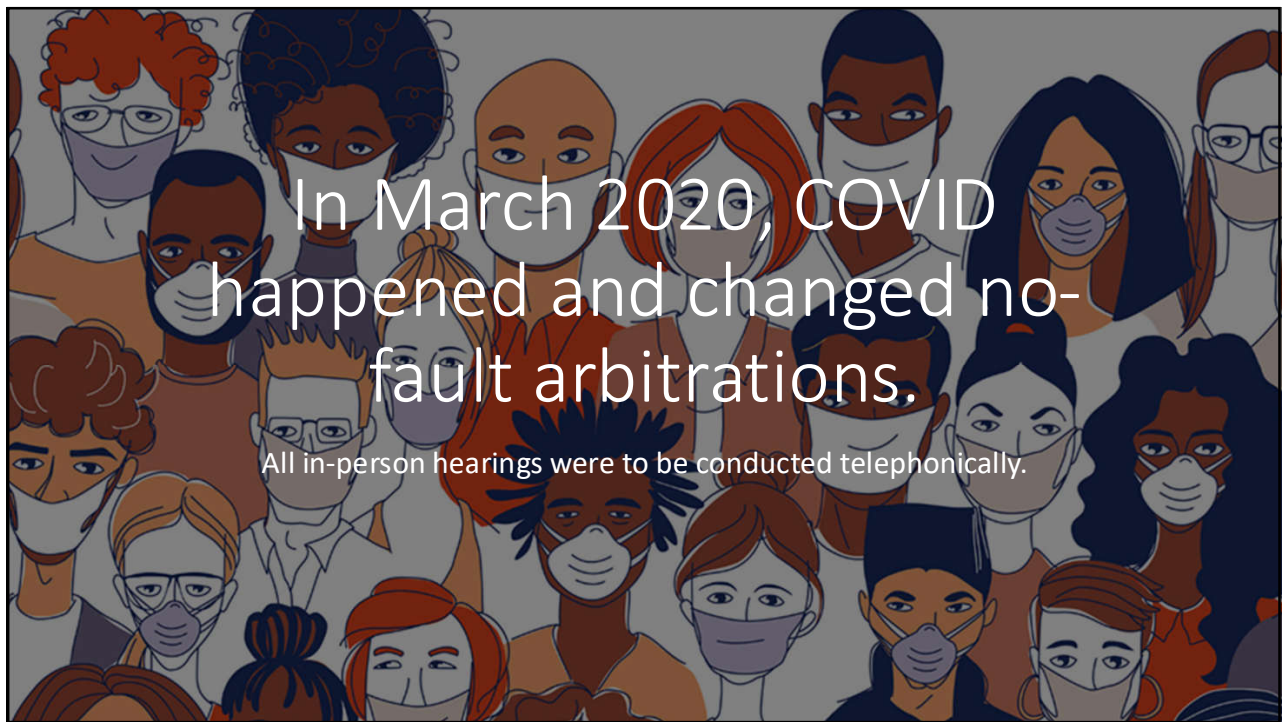



Prior to 2020, Forthright allowed for in-person no-fault arbitration hearings.

- Many hearings done by actually appearing in the DRP's office; some were done by telephone or a combination of personal appearance and telephone.
- Parties were required to upload submissions 20 days prior to hearing. This was not always complied with.
- There were instances when an attorney appearing personally would also deliver the arbitration submission to the DRP.

-
- And then we had the infamous “document dump”.



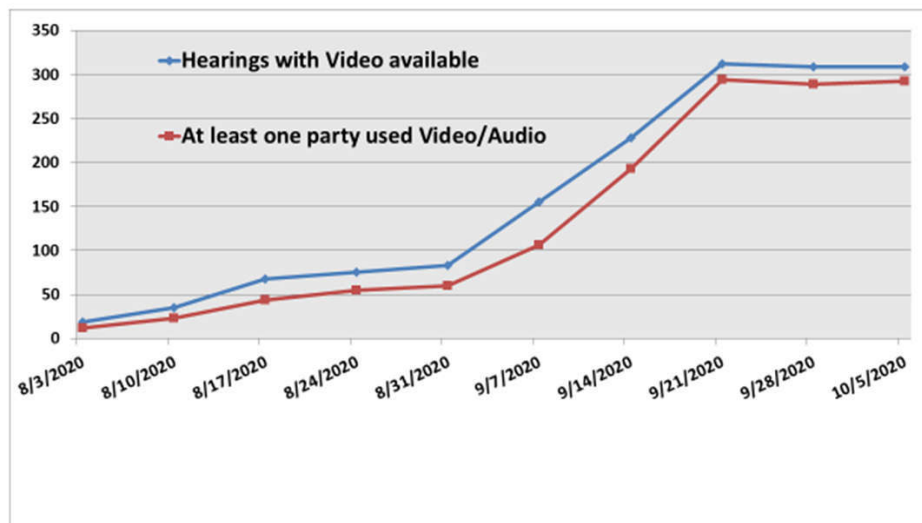




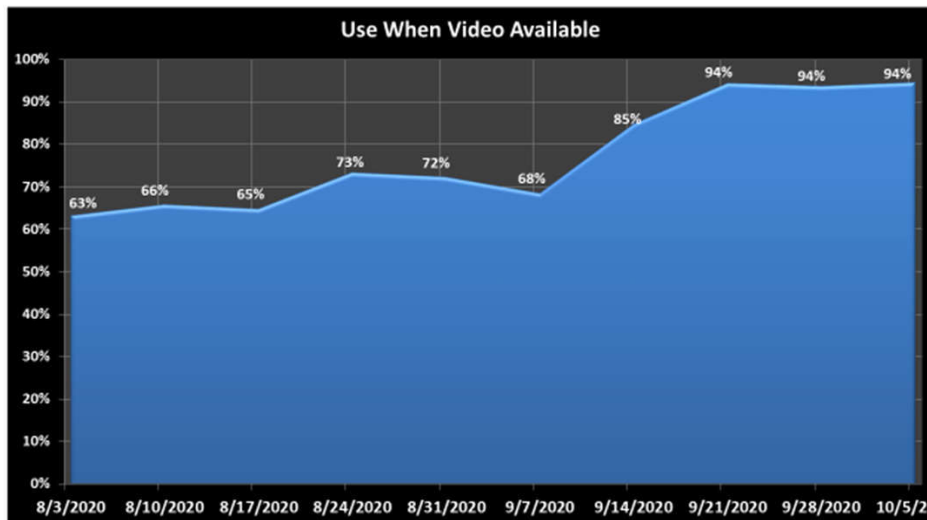
We learned to be “Zoomers”

- In July 2020, Forthright commenced pilot program for virtual in-person no-fault arbitration hearings.
- Forthright adopted technology to conduct virtual hearings using the Zoom platform. Parties could use Zoom for video appearance or just audio appearance.
- Program was optional; parties/witnesses could still appear telephonically.
- Many advantages to virtual hearings:
 - Save windshield time
 - Ability to read reactions of DRP and adversary
 - Safety in light of COVID concerns

Forthright data showed the user community liked Virtual Hearings

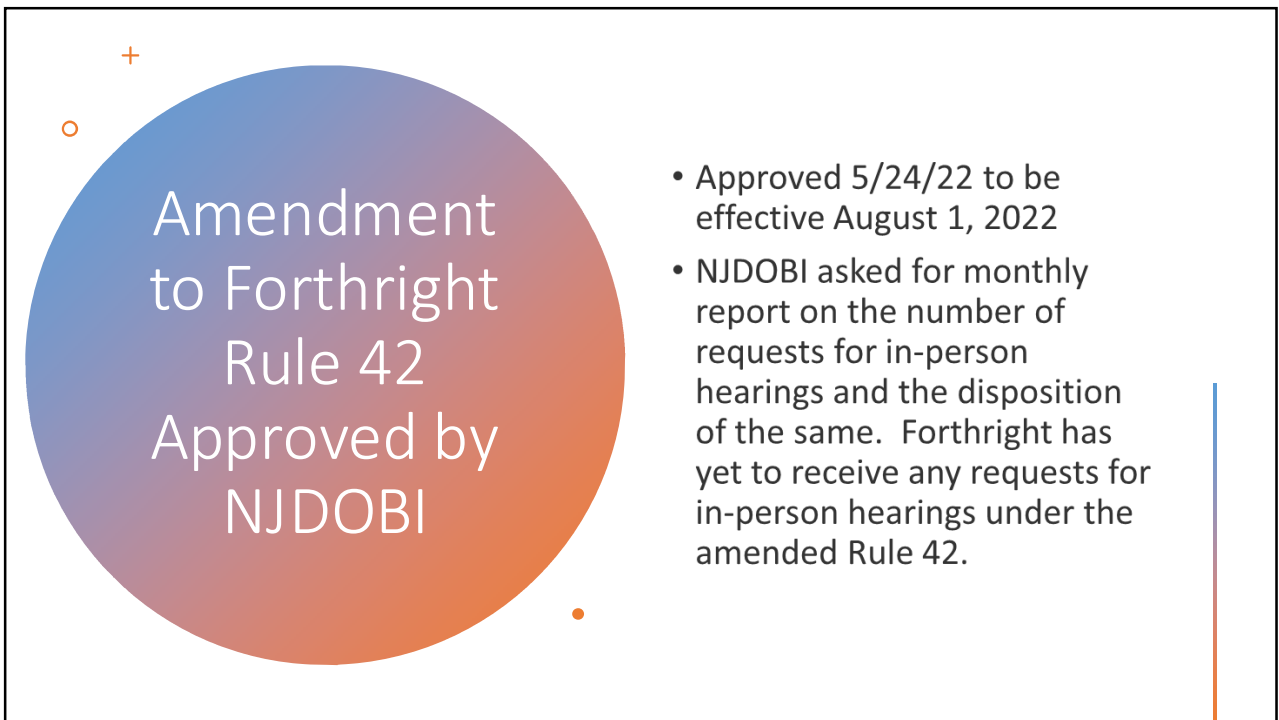


Forthright data showed the user community liked Virtual Hearings



In 2021, Forthright Advisory Counsel prepared amendment to rules to make virtual hearings the default for in-person hearings

- Parties could still appear telephonically or via Zoom using audio only.
- Attempted to establish an option for physical appearances if can be done safely and only upon request of one of the parties and approval by DRP.
- Standard of “extraordinary circumstances”
- Non-requesting parties could still appear virtually



+

o

Amendment
to Forthright
Rule 42
Approved by
NJDOBI

- Approved 5/24/22 to be effective August 1, 2022
- NJDOBI asked for monthly report on the number of requests for in-person hearings and the disposition of the same. Forthright has yet to receive any requests for in-person hearings under the amended Rule 42.

Why is this
an
important
topic?

- Electronic submissions reduce costs
 - No need to make multiple copies of submissions that could run several hundred pages each
 - Reduce postage costs
 - Reduced wear and tear on printers, use of printer consumables
- Electronic submissions are good for the environment
 - Reduce use of paper
 - Facilitate operating in a “paperless” office
 - Reduce excessive storage costs for paper files

Why is this
an important
topic??

- Electronic submissions increase efficiency
 - Can all be done on a computer
 - No need to run back and forth to printer/scanner
 - Attorney can do him/herself or can delegate to support person
- Electronic submissions increase effectiveness
 - Allows you to organize arguments and align with your evidence
 - Direct DRP to the specific portions of your submission upon which you rely
 - Allows for greater creativity and advocacy in presenting your case
 - Makes it easier for DRP to identify your arguments and evidence when preparing the arbitration award

Your arbitration submission is the most important part of your case.

- Hearings are allotted 30 minute slots; DRP may have 8-10 hearings a day
- You may get 10-12 minutes at best to present your case at the hearing
- No shorthand reporter; only record are the submissions and the DRP's notes
- After hearing closes, DRP may not look at the case for another 30 days until they start to prepare award
- And "On The Papers" cases are worse; submission is your sole means of presenting your case

Goals for
preparation of your
arbitration
submission:

- Presentation of legal arguments and evidence
- Organization of case so DRP can understand your position
- Allow DRP to easily identify the evidence you are relying upon

What you need:

- Software
 - Word processing program (such as MS Word)
 - PDF Editing program (such as Adobe Acrobat or Nuance Power PDF Advanced)
- Hardware
 - High speed multi-function printer/copier/scanner
 - Personal desktop scanner
 - If your client gives you the documents you need in an electronic PDF format, you may limit your need for scanning

+
•
○ Difference
between
Adobe
Acrobat and
a PDF editing
program

- Adobe Acrobat Reader comes free on most computers or can be downloaded for free
- It is a reader only program with limited editing potential
- Most people will view a PDF document in Adobe Acrobat Reader
- A PDF editing program allows you to create and edit a PDF document. It is not free.
- There are many other PDF editing programs on the market with PDF creation and editing capabilities. A PDF document created with any PDF software can be viewed on Adobe Acrobat Reader.

Benefits of using PDF software

- Creation of bookmarks for Exhibits
- Creation of hyperlinks within the text of the submission to lead the reader to the specific exhibit or specific page of an exhibit you are relying upon
- Use of highlighting and other editing tools to accentuate portions of a document that are important
- Redacting of documents where needed
- Ability to Bates Stamp documents
- Can include hyperlinks to materials on the Internet as well

Tips for Successful Electronic Document Preparation

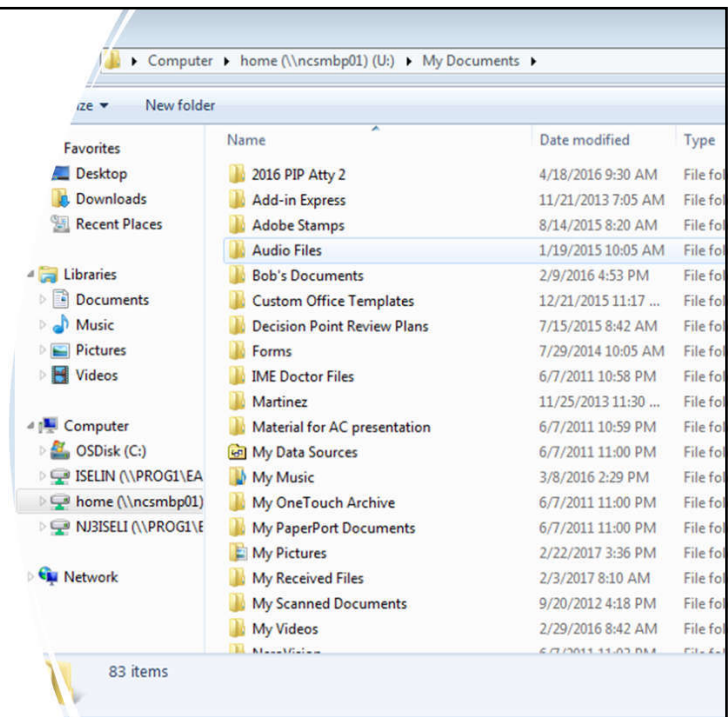
-
- Organization is key
 - Use your File Manager
 - Develop a consistent process
 - Think outside the box....what does the DRP need to understand your arguments and identify the evidence. Make it easy for the DRP to do both.



Your File Manager is your friend

- Essential to successful preparation of electronic submission is organization of your materials.
- If you use case management software, odds are you will need to have a separate location on your computer to store the documents that will be used for your submission.
- Create a folder for your submissions and then individual folders for each arb.
- Some case management programs will allow you to export directly to another folder. So you can maintain the integrity of your files in your Company sponsored case management and still be able to easily assemble your electronic submission.

Your File
Manager is
your friend



Uploading submission to Forthright

Need to be in your Case Management for the particular arbitration.

NJ Number: NJ1610001696427



You may make a settlement proposal on this case!
[Propose to Claimant](#)

Case Information

NJ1610001696427 - Sall Myers Medical Associates a/s/o Priscilla Tejada v. Progressive Insurance Company

Accident Date: 02/28/2016
 Accident State: NJ
 In-Person Proceeding Region: North
 Proceeding Type: In-Person
 Initiating Date: 10/04/2016
 In-Person Proceeding Date: 04/11/2017 3:00 PM
 Filed Date: 10/03/2016

DRP: Sylvia A Hebron Esq.
 Coordinator: David Bendel
 Status: Pending In-Person Proceeding
 Emergent Relief: No
 Expedited MRO Requested: No
 Future Medical Treatment or Testing: No

Claimant Attorney
 Midlige Richter
 Michael F Midlige
 645 Martinsville Road
 Basking Ridge, NJ 07920, USA
 Phone 1: 908-626-0622
 Fax: 908-626-0322
 arbs@midlige-richter.com

Injured Parties:
 Priscilla Tejada

File Number: 150.3086

Scheduling History

Dates are the dates of the scheduling events, not the hearing date.

Date	Description
11/19/2016	Oral Hearing Scheduling
01/18/2017	Postponement by Consent of Parties

Click on the "Upload New Docs" link at the bottom of the "Documents" section

Uploading submission in Forthright

Documents

[Expand All](#) | [Collapse All](#)

- New Documents (0)
- + Demand (1)
- Demand Attachment
- + Response (1)
- + General Correspondence (1)
- + Applications (1)
- + C Pre Hearing Submission (1)
- All Documents (ZIP format)
- Select Documents... (ZIP format)

[Upload New Docs](#)

Case Requests or Applications/Pay Fees

If you need to make a case request, file an application or pay an outstan

[Make Request or Application and/or Pay Fee](#)

Uploading submission to Forthright

- Click on “Select Files to Upload” link

Document Upload for NJ1610001696427

Click the "Select Files to Upload" button to upload your documents for this case. Once uploaded, click the Save button to save the documents to the case. also serve submissions on all other parties to the case.

Select Files to Upload

Save Cancel


- Now navigate to the location on your computer where you have saved the document(s) to be uploaded.

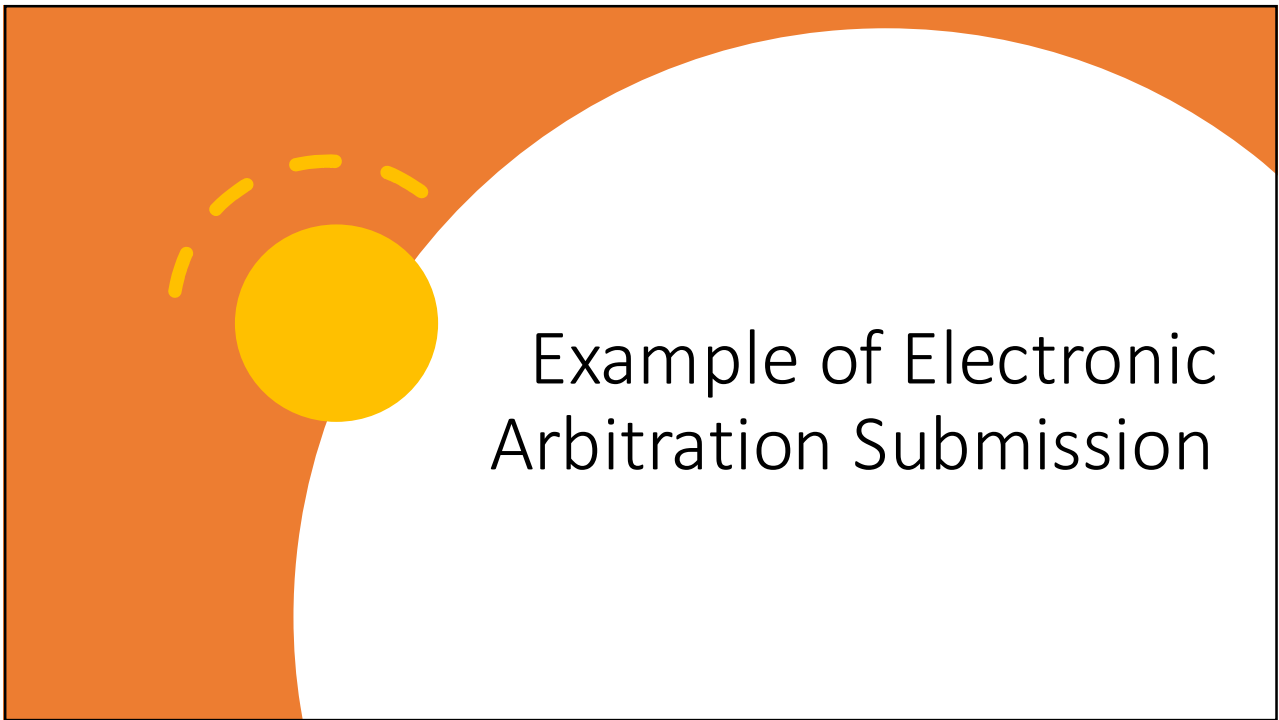
Uploading submission to Forthright

- Recommendation – Have a specific location where you save your arbitration submissions once prepared. Should be separate from any Case Management system you may be working with. Can create folders for each file or can have a general folder for completed submissions.
- Once you have selected the file(s) to be uploaded and hit “Open”, file(s) will upload and you will see progress bar on screen.
- IMPORTANT – Once document(s) have uploaded, must hit the “Save” button or file(s) will not be saved to the Case Management.




Uploading submission to Forthright

- To make sure your document(s) uploaded, go back to Case Management and to the “Documents” section. Uploaded documents should be in “New Documents” until categorized by Forthright.
 - If you upload the incorrect document, you can remove before hitting the “Save” button.
- 



This page intentionally left blank



**KEYS TO HANDLING THE
PIP CASE**

**“TIPS FROM THE
ARBITRATORS”**

Jennifer Remington-Knodel, Esq.
Jack Fannan, Esq.
Dispute Resolution Professionals



**PRESENTING
YOUR PIP
CASE**

*Efficiently and
Effectively
Handling the
Volume*

PRE-HEARING PHASE: *Rule 16 Breakdown*

RULE 16. Arbitration Summary

The parties shall provide a summary of the claim(s)/defense(s) including:

- 1) a description of all disputed medical services by the date of service, type of service, amount billed and amount owed,
- 2) the issue(s) related to each disputed amount, and
- 3) identification of the evidence relevant to the each claim, defense and issue. The parties may use the Arbitration Summary form available at www.nj-no-fault.com.



"We're running late. Skip the brief, just give me the tweet."

THE "BAD" RULE 16 BREAKDOWN

BONES-R-US IMAGING CENTER					
DOS	CPT	BILLED	FS/UCR	PAID	OWED
07/11/17	72141	\$2000	\$936.23	\$505.36	\$430.87
07/11/17	72148	\$2000	\$901.45	\$631.01	\$271.44
11/11/17	73221	\$1500	\$828.31	\$414.15	\$414.16
02/14/18	70450	\$4000	\$426.03	\$0.00	\$426.03
06/09/18	70336	\$3000	\$763.99	\$0.00	\$763.99

THE "PERFECT" RULE 16 BREAKDOWN

WE SEE BONES RADIOLOGY, LLC							
DOS	CPT	DESC	BILLED	FS/UCR	PAID	OWED	ISSUE
07/11/17	72141	Cervical MRI	\$2000	\$936.23	\$505.36	\$430.87	30% OON Co-Pay
07/11/17	72148	Lumbar MRI	\$2000	\$901.45	\$631.01	\$271.44	30% OON
11/11/17	73221	Left Shoulder MRI	\$1500	\$828.31	\$414.15	\$414.16	50% PRECERT
02/14/18	70450	Brain CT	\$4000	\$426.03	\$0.00	\$426.03	MN
06/09/18	70336	TMJ MRI	\$3000	\$763.99	\$0.00	\$763.99	CAUSATION

THE LEGAL BRIEF

"A BRIEF SHOULD BE BRIEF!"



"You call this a brief. It's thirty pages long."

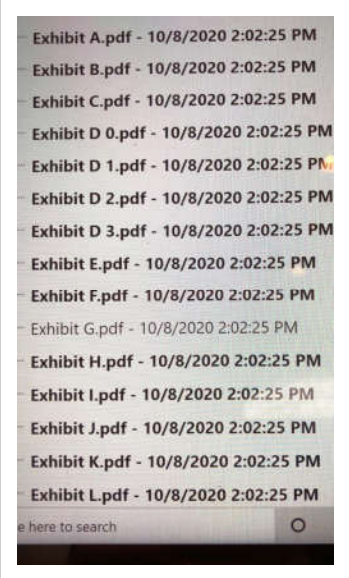
THE LEGAL BRIEF: The DO's

- DO use point headings to separate the issues
- DO put threshold issues first
- DO limit your use of underlining, **BOLDING**, *ITALICIZING*, EXCLAMATION POINTS!!!, ALL CAPS and utilizing Multiple **Fonts**
- DO provide a legal analysis...argue your position...connect the dots
- DO put your medical records in chronological order
- Do clearly identify your exhibits

PRESENTATION OF EVIDENCE

Wise Quote from DRP Fannan

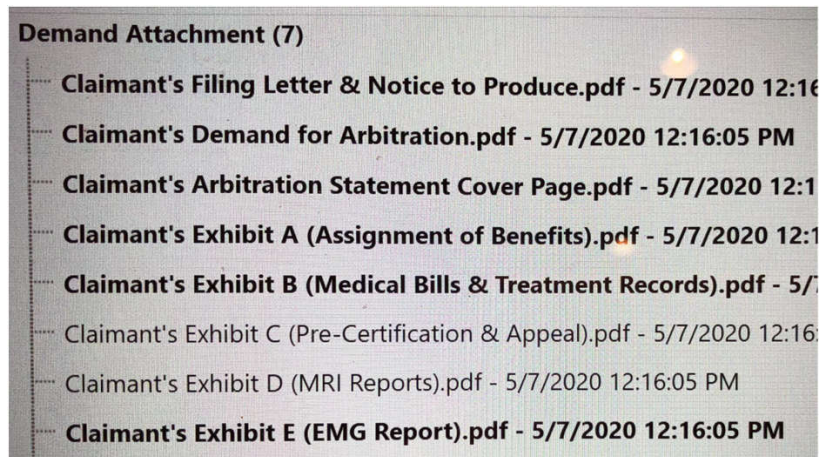
"Only those documents which have been individually identified with specificity for their content and relevance will be considered evidential."



UNMARKED EXHIBITS

“THE NIGHTMARE PRESENTATION”

BEAUTIFULLY MARKED EXHIBITS “THE DREAM PRESENTATION”



THE LEGAL BRIEF: The DO NOTS

- DO NOT put in a preamble or preliminary statement
- DO NOT give a history of AICRA
- DO NOT make your entire brief an ode to prior awards
- DO NOT fill your brief with boiler plate defenses or claims which have nothing to do with your case
- DO NOT put in evidence that has nothing to do with your defenses or claims being raised

TIMELINESS OF SUBMISSIONS:

Rule 39 (Party Submissions – In Person

... All submissions and the identity of any expert witness that a party intends to offer at a hearing **must be provided to all other parties and Forthright at least 20 days in advance of the hearing.** If not submitted within the above time frame, such submissions and/or expert(s) **shall** be disallowed at the time of the hearing if the DRP determines that the late submission creates surprise or prejudice for any party.



CONSEQUENCES
OF
LATE
PRE- HEARING
SUBMISSIONS



"I get that it was wrong. I don't get why it matters."

TO MOD CLAR OR NOT TO MOD CLAR?
THAT IS THE QUESTION...

RULE 24. Modification/Clarification of Award

Any party may submit one request to

- (a) clarify the Award and/or
- (b) correct any clerical, typographical, or computational errors, and/or
- (c) consider claims presented to the DRP at the time of the hearing for in-person cases, or in the parties' submissions for on-the-papers cases, but omitted from the Award.

A REQUEST FOR MOD CLAR IS NOT A MOTION FOR RECONSIDERATION

24. Modification/Clarification of Award

Any party may submit one request to

- (a) clarify the Award and/or
- (b) correct any clerical, typographical, or computational errors, and/or
- (c) consider claims presented to the DRP at the time of the hearing for in-person cases, or in the parties' submissions for on-the-papers cases, but omitted from the Award.

4:49-2. Motion to Alter or Amend a Judgment or Order

Except as otherwise provided by R. 1:13-1 (clerical errors) **a motion for rehearing or reconsideration seeking to alter or amend a judgment...** The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred...

THINGS TO KEEP IN MIND WHEN DECIDING WHETHER OR NOT TO FILE A MOD CLAR

- It is NOT a Motion for Reconsideration
- It is NOT a Second Bite at The Apple
- It is NOT a Motion for a Re-Hearing
- It is NOT a Chance to Vent Your Spleen on the DRP
- Exercise the 24-Hour Rule
- Re-Read the Award and Ask Yourself “Do I Have a Proper Basis Under Rule 24 or Do I Simply Disagree with the Outcome?”
- If it is a Mathematical Error, Can I Resolve the Error with my Adversary Without the Need for the Request?
- Be RESPECTFUL to the DRP in the Request



This page intentionally left blank

About the Panelists...

David B. Angeluzzi is an associate with Chasan Lamparello Mallon & Cappuzzo, P.C. in Secaucus, New Jersey. He concentrates his practice in insurance defense and insurance coverage, primarily in tort-based liability matters; uninsured and underinsured motorist claims; and personal injury protection (PIP) disputes. He serves as in-house counsel for large insurance companies and medical providers with respect to PIP, home and automobile liability defense as well as PIP arbitrations; and he also has experience in civil litigation representing plaintiffs in personal injury matters.

Mr. Angeluzzi is admitted to practice in New Jersey and Wisconsin. He is also admitted before the Workers' Compensation Court, the United States District Court for the District of New Jersey and the United States Bankruptcy Court for the District of New Jersey.

Mr. Angeluzzi received his B.A. from Loyola College and his J.D. from Marquette University Law School, where he was a member of the *Marquette Sports Law Review* and served as a Teaching Assistant for a Mediation/Alternative Dispute Resolution course. He served as a judicial law clerk to the Honorable Randolph M. Subryan, J.S.C. (Ret.), Superior Court of New Jersey, Passaic Vicinage.

Colleen R. Buontempo is Counsel to Brach Eichler LLC in Roseland, New Jersey, where she represents clients primarily in PIP arbitration, with approximately 65-70% of cases settling and approximately a 93% success rate for cases that proceed through arbitration. She has successfully represented and recovered millions of dollars for her clients, which include individuals, ambulatory care facilities, hospitals, physician groups and health care entrepreneurs.

Ms. Buontempo is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey. Prior to joining Brach Eichler, she practiced in a wide variety of legal areas, including criminal defense, automotive litigation, premises liability, worker's compensation, negligent security, New York labor law and products liability. In *Drive New Jersey Insurance Co. v. Pleasantdale Ambulatory Care* Ms. Buontempo successfully defended an order to show cause to overturn a prior arbitration award for surgical supplies awarded to an ASC, and in *Pleasantdale Ambulatory Care v. Farmers Insurance Company* she successfully pursued an order to show cause which vacated a three-DRP appeal panel's award. She has been a frequent contributor to the Healthcare Law Blog.

Ms. Buontempo received her B.S. from Wayne State University and her J.D. from Thomas M. Cooley Law School.

Nicole R. Cassata, of Chasan Lamparello Mallon & Cappuzzo, P.C. in Secaucus, New Jersey, concentrates her practice in insurance defense litigation with an emphasis in Forthright Arbitration Forum personal injury protection (PIP) arbitrations. She has also successfully tried auto negligence cases in Hudson and Essex Counties.

Admitted to practice in New Jersey, Ms. Cassata has been a member of the Hudson County Bar Association's Young Lawyers Division. She is Chair of the PIP Committee for the New Jersey

Defense Association (NJDA) and also served on the Forthright Advisory Council. Prior to joining the firm, Ms. Cassata was an Assistant Prosecutor for Hudson County, where she focused on appellate matters and argued before the New Jersey Appellate Division regarding excessive sentences and retroactivity. She has lectured for ICLE and the Hudson County Bar Association on PIP defense practice.

Ms. Cassata received her B.A. from Fairfield University and her J.D. from Seton Hall University. She was Judicial Law Clerk to the Honorable Carmen Messano, Superior Court, Civil Division, Hudson County Vicinage.

Mark T. Connell is the Director of NJ Arbitrations/Operations Counsel for Forthright in Somerset, New Jersey, where he is responsible for all aspects of operations in the administration of the New Jersey No-Fault PIP Arbitration program. He has counseled management and employees on several legal matters, including high-level issues involving compliance with and advancement of the regulatory and statutory goals of the program.

Mr. Connell is admitted to practice in New Jersey and California, and before the United States District Court for the District of New Jersey and the Northern District of California. Prior to joining Forthright, he was in private practice as a trial attorney for firms in New Jersey and California, and was of counsel and on the brief in the New Jersey PIP coverage decision *Aversano v. Atlantic Employers Ins. Co.*

Mr. Connell received his B.S. from Tulane University and his J.D. from Santa Clara University School of Law (California).

Jack Fannan is a Dispute Resolution Professional (DRP) and is in private practice in Avon-by-the-Sea, New Jersey, where he has substantial experience in the litigation of personal injury, property damages, ERISA actions, toxic torts, bankruptcy actions, policy coverage suits, professional malpractice, Workers' Compensation actions, subrogation and product liability claims.

Admitted to practice in New Jersey and before the United States District Court and the Third Circuit Court of Appeals, Mr. Fannan is an Arbitrator for Forthright. He has also served as an instructor for the American Institute for Paralegal Studies.

Mr. Fannan received his B.A. from Georgetown University and his J.D., *cum laude*, from Seton Hall University School of Law. He has also completed course requirements for a Master's Degree in Guidance and Counseling from Montclair State University.

Daniel Leonart is an associate with Joseph M. Ariyan, Esq., LLC in Paramus, New Jersey.

Mr. Leonart received his B.A. from Fairleigh Dickinson University and his J.D. from New York Law School.

Robert A. Maren is a Managing Attorney of Vella & Maren in Iselin, New Jersey, and New Jersey Staff Counsel for the Progressive Group of Insurance Companies. He has been in practice since

1987 with an emphasis in civil litigation, insurance law, insurance fraud, alternate dispute resolution and no-fault litigation and arbitration.

Admitted to practice in New Jersey, Mr. Maron is a member of the Forthright New Jersey No-Fault Advisory Counsel and a former Staff Attorney for Progressive Insurance. He has lectured on PIP matters for ICLE.

Mr. Maren received his B.S. from the University of Scranton and his J.D. from Seton Hall University School of Law.

Jennifer Remington-Knodel is a Dispute Resolution Professional (DRP) in Totowa, New Jersey, who has arbitrated New Jersey Personal Injury Protection (PIP) disputes since 2006. Prior to becoming a PIP DRP, she had a diverse legal career in public and private practice.

Admitted to practice in New Jersey, Ms. Remington-Knodel has been a member of New Jersey State and Essex County Bar Associations. She was formerly an Assistant County Counsel in the Office of Essex County Counsel for more than 4 years, where she handled *Tort Claims Act* defense litigation, and subsequently was a litigation associate and Contract Attorney in the House Counsel Office of the Chubb Group of Insurance Companies. She has been a Master of the Brennan Vanderbilt American Inn of Court and a member of the Seton Hall Law Women's Leadership Advisory Committee.

Ms. Remington-Knodel is a *cum laude* graduate of Lehigh University and received her J.D. from Seton Hall University School of Law. She was Judicial Law Clerk to the Honorable Murray G. Simon, Superior Court of New Jersey, Chancery Division, General Equity.

Jeffrey A. Rizika is a Partner in Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C. in Roseland, New Jersey. Concentrating his practice in civil litigation, personal injury, malpractice and municipal court litigation, he also serves as an arbitrator for the Law Division of the Superior Court of New Jersey in Essex County and has served as a private arbitrator on numerous motor vehicle matters. The majority of his practice is devoted to automobile, truck and bus litigation, as well as premises liability cases.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Mr. Rizika is a member of the American Association for Justice (AAJ), the largest trial lawyer organization in the country, and the New Jersey Association for Justice (NJAJ), New Jersey's largest trial lawyer organization. He sits on the Board of Governors of NJAJ, where he has served as Co-Chair of the Auto Committee for several years. Mr. Rizika is also Past Chair of the Motor Vehicle Collision, Highway, and Premises Liability Section of AAJ as well as Past Vice Chair of the Discovery Abuse Committee of AAJ's Interstate Trucking Litigation Group. He is also a member of the Essex County Bar Association and the Insurance and Auto Reparations Committees of the New Jersey State Bar Association Civil Trial Bar Section.

Mr. Rizika has been a frequent lecturer and moderator for the NJAJ and the New Jersey State Bar Association on many topics relating to personal injury law. In 2020 he was the recipient of a Certificate of Recognition from the AAJ and in 2023 received the NJAJ's Gold Medal award for Distinguished Service.

Mr. Rizika received his B.A. and B.S. from Tulane University and his J.D. from Syracuse University College of Law.