

## ANSWERS TO COMMON PIP QUESTIONS

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In automobile collision cases, Kentucky is a No-Fault State mandating every automobile insurer to provide minimum No-Fault benefits of \$10,000 per person to cover medical expenses and/or wage loss. These benefits are also known as Basic Reparations Benefits (BRB) or Personal Injury Protection Benefits (PIP). Most lawyers who regularly handle these cases call it PIP, which I will do throughout this article.

PIP is a true benefit for our clients, and us as their attorneys in most instances, as opposed to being a non-PIP jurisdiction with only Medical Payments Coverage. PIP is set out in Chapter 304.39 of the Kentucky Revised Code, known as the Kentucky Motor Vehicle Reparations Act (MVRA). The MVRA statutes can be confusing at times and lead to mistakes, and possibly malpractice, by many lawyers. To prevent this from happening, I've decided to touch upon some of the common PIP questions.

### Statute of Limitations for Automobile Collisions Occurring in Kentucky

The statute of limitations in Kentucky for an automobile collision is 2 years from the date of the accident. KRS 304.39-230(6). However, if PIP benefits are paid, then the statute of limitations is extended to 2 years after each PIP payment. KRS 304.39-230(6). So, each time your client's PIP carrier makes a payment, the 2-year "clock" starts over for purposes of the statute of limitations.

There are a few caveats. First, the "clock" starts to run upon issuance of the PIP payment, not the date your client's medical provider cashes the check. *Wilder v. Noonchester*, 113 S.W.3d 189 (Ky. App. 2003). Second, payments made under your client's Medical Payments Coverage (example, Kentucky Farm Bureau typically includes MedPay on their policies and issues payment from that coverage after PIP is exhausted), is not the equivalent of a PIP payment and does not extend the statute of limitations. *Lawson v. Hilton Sanitation, Inc.*, 34 S.W.3d 52 (Ky. 2000). Lastly, PIP payments and the MVRA do not extend the basic 2-year statute of limitations for property damage claims. *American Premier Ins. Co. v. McBride*, 159 S.W.3d 342 (Ky. App. 2004).

### Statute of Limitations for Commencing an Action for (or Collecting) PIP Benefits

KRS 304.39-230(1) provides that an action for PIP benefits must be commenced no later than 2 years after your client suffers the loss (i.e. incurs medical bills and lost wages) and either knows/should have known that the loss was caused by the accident, or not later than 4 years after the accident, whichever is earlier. Meaning, that the statute of limitations for purposes of collecting PIP runs from the date of the medical treatment not the car wreck. So, if a client comes to you more than 2 years after the accident, a claim for PIP benefits can be presented for the first time up to 4 years after the accident. However, you may only collect bills incurred within 2 years of your first claim, in other words, there is a 2-year "look back" period. Therefore, medical bills incurred more than two years before the suit for PIP benefits cannot be collected. The Kentucky Court of Appeals addressed this issue in *State Auto v. Lane*, 697 S.W.2d 167, 169 (Ky. App. 1985), stating "recovery may be had (PIP benefits) for prior losses only if they accrued within two years before suit is filed".

KRS 304.39-230(1) also states that an action for additional PIP benefits must be commenced not later than 2 years after the last PIP payment. Such an action for further benefits is timely commenced when a request has been made within 2 years of the last PIP payment, even though the requested payment was not made until after the 2 year window. Moore v. Gross, 2006-CA-2039 (unpublished opinion).

This begs the question as to whether you can revive an action against a tortfeasor if suit was not filed within 2 years of the accident and no PIP benefits were ever paid, but a PIP claim is opened and benefits are paid within 4 years of the accident pursuant to KRS 304.39-230(1)?

### Which Automobile Carrier Pays PIP?

Client is a Passenger If your client is a passenger in a car, then the owner's insurance has to pay your client's PIP benefits. KRS 304.39-050(1). If the owner does not have PIP, then any other PIP policy under which your client is an insured applies. KRS 304.39-050(2). So, if the owner doesn't have insurance and your client has his/her own policy, then your client's insurance policy will provide the PIP benefits. If your client doesn't have insurance, then file a claim through the Kentucky Assigned Claims Plan. KRS 304.39-160.

Client is Pedestrian If your client is a pedestrian, then the insurance company for the car that struck your client-pedestrian owes the PIP benefits. KRS 304.39-050(1). Same as above, if the striking car doesn't have insurance, then your client's insurance policy will provide the PIP benefits.

### What Happens to the PIP Lien if the Tortfeasor's Liability Limits Are Exhausted?

In cases where you collect the entire liability limits from the tortfeasor's automobile carrier, the PIP lien is automatically extinguished. The MVRA gives priority of recovery to the injured person over the PIP carrier. KRS 304.39-070(4) read together with KRS 304.39-140(3). See also State Auto Mut. Ins. Co. v. Empire Fire & Marine Ins. Co., 808 S.W.2d 805 (Ky. 1991).

### Out-of-State Clients Injured in Kentucky

If your client lives in another State, but was injured in Kentucky, then they are entitled to collect PIP benefits. KRS 304.39-030(1).

As recently as 2007 the Kentucky Court of Appeals succinctly stated the general rule that "out-of-state insurance companies [who do not do business in Kentucky] are not required to comply with Kentucky no-fault requirements for their insureds who are not Kentucky residents but who are involved in motor vehicle accidents in Kentucky." Stephenson v. State Farm, 217 S.E. 3d 878 (Ky. App. 2007) citing State Farm Mut. Auto Ins. Co. v. Tennessee Farmers Mut. Ins. Co., 785 S.W.2d 520 (Ky. App. 1990) The Court went on to explain that only out-of-state insurance companies that are registered to do business in Kentucky are required to pay PIP benefits to insureds residing out of the state who are involved in an automobile accident in Kentucky. Stephenson at 880.

If your client's out-of-state automobile carrier does not do business in Kentucky, then your client must collect PIP benefits through the Kentucky Assigned Claims Plan. KRS 304.39-160. The required forms can be found on the Kentucky Department of Insurance website located at <http://doi.ppr.ky.gov/kentucky/docs.asp?Divid=13>

#### Directing PIP Payments

You can direct the PIP carrier how to use your client's PIP benefits, such as reserving them for lost wages or which medical providers to pay first. However, this must be done in writing. KRS 304.39-241. In more serious cases you should direct PIP to pay wages and medical bills submitted only by your office. Use your client's health insurance to process all medical bills and use PIP for co-pays, deductibles and non-covered items. Later, you can negotiate a reduction on the subrogation health insurance lien. Another option is to send the PIP carrier \$10,000 worth of unpaid medical bills and direct the PIP carrier to send you the entire PIP benefits made payable to you and your client. Then you can deposit the \$10,000 in PIP benefits in your client's escrow account and hold to cover the above items and use to negotiate any health insurance subrogation claim.

#### Injured Party Does Not Control PIP's Subrogation Claim

Your client does not have control over PIP's subrogation claim and, therefore, cannot extinguish this claim by signing a release. Likewise, the signing of a release does not affect your client's right to collect future PIP benefits (assuming PIP benefits remain). see *Ohio Casualty v. Ruschell*, 834 S.W.2d 166 (Ky. 1992) and *Holzhauser v. West American*, 772 S.W.2d 650 (Ky. App. 1989).

#### Motorcycles & PIP

PIP is available to motorcycles, but it is optional coverage which must be separately purchased. Your client's automobile PIP will not cover them on a motorcycle. KRS 304.39-040(4). This provision applies to both operators and passengers of motorcycles.

#### Injured Plaintiff is Uninsured

If your client was uninsured at the time of their injury, then they cannot recover PIP benefits nor can they bring a direct tort claim for damages that fit within the definition of "basic reparations benefits." KRS 304.39.310(2) & *Bartlett v. Prime Ins. Syndicate*, 156 S.W.3d 299 (Ky. App. 2004).

#### PIP & Work Loss Benefits for Plaintiff's Unemployed on Date of the Accident

If your client is unemployed at the time of an automobile accident, but is offered a job after that accident that they cannot fulfill (or accept) because of a physician's advice, then your client can collect work loss benefits under PIP. *Foster v. Kentucky Farm Bureau Mut. Ins. Co.*, 189 S.W.3d 553 (Ky. 2006)