

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Automobile Insurance

Unsatisfied Claim and Judgment Fund Assessments

Adopted Repeal: N.J.A.C. 11:3-28A

Proposed: July 21, 2003 at 35 N.J.R. 3259(a).

Adopted: November 19, 2003 by Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Filed: November 19, 2003 as R.2003 d. 501, without change.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and P.L. 2003, c. 89, sections 4, 9 and 10 (codified at N.J.S.A. 17:30A-8, 39:6-63 and 39:6-64.1, respectively).

Effective Date: December 15, 2003.

Summary of Public Comments and Agency Responses:

The Department received comments from the Alliance of American Insurers, the Independent Insurance Agents of New Jersey (IIANJ), New Jersey Manufacturers Insurance Group (NJM), and B. Sachau.

COMMENT: Two commenters expressed their support for the proposed repeal. The commenters indicated that the annual UCJF assessment is no longer necessary, and that the repeal is part of the State's efforts to reduce costs and redundancies.

RESPONSE: The Department appreciates the commenters' support.

COMMENT: One commenter stated that the Department's proposed repeal eliminates the mechanism for calculating and assessing insurance

companies for payments made by the Fund to claimants involved in automobile accidents with uninsured motorists. While P.L. 2003, c. 89 eliminated the UCJF Board and transferred its functions to the Property-Liability Insurance Guaranty Association (PLIGA), it did not eliminate the UCJF itself or the need to continue annual assessments. By repealing this regulation without delineating an appropriate assessment and recoupment procedure, the Department leaves unanswered the question of how the industry will be assessed. The commenter added that suggesting that some type of an assessment mechanism will be included in the PLIGA Plan of Operation is not supportable as it does not provide an opportunity for notice and comment as required under the Administrative Procedure Act.

The commenter also stated that an assessment mechanism for funds expended on pedestrian PIP claims must also be included, and that this repeal fails to address whether industry payments to support the continued obligations of the UCJF fund will be passed through as premium surcharges on policyholders or continued as expenses in private passenger automobile rates.

RESPONSE: In addition to eliminating the UCJF Board and transferring its functions to PLIGA, PL 2003,c.89 authorized PLIGA to raise funds by assessment to pay UCJF obligations. UCJF covered two types of liabilities: (1) reimbursement for excess medical benefits (EMB), which were personal injury protection (PIP) medical expenses in excess of \$75,000; and (2) claims of persons injured by uninsured motorists. Of the two, EMB reimbursement

constituted the bulk of the assessments. Additionally, P.L. 2000, c.89, section 35 removed responsibility for pedestrian PIP claims from individual personal auto insurers and made them the responsibility of the PLIGA/UCJF.

Because these responsibilities have been reallocated from the UCJF Board to the PLIGA, this subchapter concerning UCJF assessments may be repealed, as other rule changes provide for assessments to raise the necessary funds, and for processes to enable insurers to recover the attendant costs. In respect to the EMB costs, these will be assessed upon and recouped by PLGIA members, as provided in N.J.A.C. 11:1-6.3, which is also being amended in order to implement P.L. 2003, c.89. See 35 N.J.R. 3071(a) and its notice of adoption published elsewhere in this issue of the New Jersey Register. With respect to recovery of assessments to pay uninsured motorist and pedestrian PIP claims, these will be assessed to auto insurers only and recovered as expenses in their rates. Additional clarifying language on this issue is set forth in the adopted amendments to N.J.A.C. 11:3-16. See 35 N.J.R. 3084(a) and its notice of adoption published elsewhere in this issue of the New Jersey Register

The Department disagrees with the commenter's assertion that setting forth the detail of the assessment mechanism in the PLIGA Plan of operation "is not supportable as it does not provide an opportunity for notice and comment as required under the Administrative Procedure Act." PLIGA's authorizing statute specifically provides for such detail to be set forth in a Plan of Operation developed by its Board (which is selected from member insurers) and approved

by the Commissioner, consistent with the statutes and administrative rules adopted by the Department. PLIGA has functioned for decades pursuant to its Plan of Operation, as modified from time to time. It is not a "State agency" as defined at N.J.S.A. 52:14B-2 and is not authorized to adopt or promulgate rules.

COMMENT: One commenter stated that this rule should include procedures for seizing the cars of all those who drive autos that are not insured or registered, then either selling the cars to cover the expenses of this action or releasing the cars after a \$2,000 payment has been made. The commenter added that uninsured drivers cause the rates of insured drivers to increase, and that allowing people to continue to drive while uninsured drains an already bad economy.

RESPONSE: The comments are beyond the scope of this proposal, which is limited to repealing the Department's existing rules addressing the procedures for the assessment of insurers by the UCJF. Notwithstanding that fact, seizure of uninsured vehicles will be addressed by law enforcement authorities. Section 79 of P.L. 2003, c. 89, which becomes effective 365 days following enactment of the law, provides that an individual cited for failure to possess an insurance identification card for a motor vehicle has 24 hours to produce the card or a warrant to impound the motor vehicle will be issued. An impounded vehicle would not be released until a valid identification card is

produced, and all costs including fines are paid. The section also establishes procedures for public auction of an impounded vehicle.

Federal Standards Statement

A Federal standards analysis is not required because this repeal is not subject to any Federal standards or requirements.

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