

NEW YORK CODES, RULES AND REGULATIONS

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TITLE 11. INSURANCE DEPARTMENT
CHAPTER III. POLICY AND CERTIFICATE PROVISIONS
SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE
PART 65. * (REGULATION 68) REGULATIONS IMPLEMENTING THE COMPREHENSIVE
MOTOR VEHICLE INSURANCE REPARATIONS ACT

11 NYCRR § 65.11 (2003)

§ * 65.11 Rights and liabilities of self-insurers with respect to personal injuries sustained on and after December 1, 1977

(a) A self-insurer is any person, firm, association or corporation that:
(1) maintains a form of financial security other than an owner's automobile insurance policy in satisfaction of article VI or VIII of the New York Vehicle and Traffic Law; or

(2) is subject to article 51 of the New York Insurance Law as provided for in section 321 of the New York Vehicle and Traffic Law. In accordance with the provisions of article 51 of the New York Insurance Law and these regulations, a self-insurer shall pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle within the United States of America, its territories or possessions, or Canada.

(b) First-party benefits. First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

(1) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings; and

(2) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article 9 of the New York Workers' Compensation Law.

(c) Basic economic loss. Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as provided in this section. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$ 50,000, or \$ 75,000 if the self-insurer elects to provide optional basic economic loss coverage on or after November 12, 1991, except that any death benefit shall be in addition thereto.

(d) If the self-insurer has elected to provide Optional Basic Economic Loss (OBEL) coverage, the eligible injured person or that person's legal representative may specify that the OBEL coverage will be applied to one of the following four options:

- (1) basic economic loss;
- (2) loss of earnings from work;
- (3) psychiatric , physical or occupational therapy and rehabilitation; or
- (4) a combination of options (2) and (3).

(e) OBEL coverage shall apply after the initial \$ 50,000 of basic economic loss has been exhausted.

(f) Medical expense. Medical expense shall consist of necessary expenses for:

- (1) medical, hospital, surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;
- (2) psychiatric, physical and occupational therapy and rehabilitation;
- (3) any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and
- (4) any other professional health services.

These medical expenses will not be subject to a time limitation, provided that within one year after the date of the accident it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments pursuant to this section for necessary medical expenses shall be subject to the limitations and requirements of section 5108 of the New York Insurance Law.

(g) Work loss. Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$ 1,000 per month for claims arising out of accidents occurring prior to November 12, 1991, and up to a maximum payment of \$2,000 per month for claims arising out of accidents occurring on or after November 12, 1991, provided that loss of earnings shall be payable for a maximum period of three years from the date of the accident:

- (1) loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a

reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and

(2) reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

(h) Other expenses. Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$ 25 per day for a period of one year from the date of accident causing injury.

(i) Death benefit. Upon the death of any eligible injured person, caused by an accident for which the self-insurer is required to provide first-party benefits pursuant to this section, the self-insurer will pay to the estate of such person a death benefit of \$ 2,000.

(j) Eligible injured person. Subject to the exclusions and conditions set forth below, an eligible injured person is:

(1) the self-insurer (who is a natural person) and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;

(2) the self-insurer (who is a natural person) and any relative who, on or after July 22, 1982, sustains personal injury arising out of the use or operation of any motorcycle while not occupying a motorcycle;

(3) any other person who sustains personal injury arising out of the use or operation of the self-insured motor vehicle in the State of New York while not occupying another motor vehicle; or

(4) any New York State resident who, on or after January 1, 1983, sustains personal injury arising out of the use or operation of the self-insured motor vehicle outside of New York State while not occupying another motor vehicle.

(k) Exclusions. The requirement for payment by a self-insurer of first-party benefits does not apply to personal injury sustained by:

(1) the self-insurer (who is a natural person) or relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the self-insurer with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(2) any relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the relative with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(3) the self-insurer (who is a natural person) or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the self-insured motor

vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect;

(4) the self-insurer (who is a natural person) or relative while not occupying a motor vehicle or a motorcycle when struck by a motorcycle in New York State with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect;

(5) any New York State resident other than the self-insurer or relative injured through the use or operation of the self-insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act;

(6) any New York State resident other than the self-insurer or relative injured through the use or operation of the self-insured motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(7) any person in New York State while occupying the self-insured motor vehicle which is a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, but only if such person is a named insured or relative under any policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act; however, this exclusion does not apply to the operator, an owner, or an employee of the owner or operator, of such bus or school bus;

(8) any person while occupying a motorcycle;

(9) any person who intentionally causes his own personal injury;

(10) any person as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law); or

(11) any person while:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;

(ii) operating a motor vehicle in a race or speed test;

(iii) operating or occupying a motor vehicle known to him to be stolen; or

(iv) repairing, servicing or otherwise maintaining a motor vehicle if such conduct is within the course of a business

of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises.

(1) Other definitions. When used in this section:

(1) motorcycle means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law, and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;

(2) motor vehicle means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;

(3) occupying means in or upon or entering into or alighting from;

(4) personal injury means bodily injury, sickness or disease;

(5) relative means a spouse, child or other person related to the self-insurer (who is a natural person), by blood, marriage or adoption (including a ward or foster child), who regularly resides in the self-insurer's household, including any such person who regularly resides in the household but is temporarily living elsewhere; and

(6) use or operation of a motor vehicle or a motorcycle includes the loading or unloading of such vehicle.

(m) Conditions.

(1) Action against self insurer. No action shall lie against the self-insurer unless, as a condition precedent thereto, there shall have been full compliance with the terms of this section.

(2) Notice. In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by or on behalf of each eligible injured person to the self-insurer or any of the self-insurer's authorized agents, as soon as reasonably practicable, but in no event more than 90 days after the date of the accident, unless the eligible injured person submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. If an eligible injured person or that person's legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the self-insurer or any of the self-insurer's authorized agents by such eligible injured person or that person's legal representative.

(3) Proof of Claim; Medical, Work Loss, and Other Necessary Expenses. In the case of a claim for health service expenses, the eligible injured person or that person's legal representative shall submit written proof of claim to the self-insurer, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 180 days after the date services are rendered or 180 days after the date written notice was given to the self-insurer, whichever is later. The eligible injured person or that person's legal representative shall submit written proof of claim for work loss benefits to the self-insurer as soon as reasonably practicable. Written proof of claim for other necessary expenses shall be submitted by the eligible injured person or that person's legal representative to the self-insurer as soon as reasonably practicable but, in no event, later than 90 days after the services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's legal representative submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. Upon request by the self-insurer, the eligible injured person or someone on that person's behalf shall:

- (i) execute a written proof of claim under oath;
- (ii) provide authorization that will enable the self-insurer to obtain medical records; and
- (iii) provide any other pertinent information that may assist the self-insurer in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the self-insurer when, and as often as, the self-insurer may reasonably require.

(4) Arbitration. In the event any person making a claim for first-party benefits and the self-insurer do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Insurance.

(5) Reimbursement and trust agreement.

(i) To the extent that the self-insurer pays first-party benefits, the self-insurer is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The self-insurer shall have a lien upon any such settlement or judgment to the extent that the self-insurer has paid first-party benefits. An eligible injured person shall:

- (a) hold in trust, for the benefit of the self-insurer, all rights of recovery which he shall have

for personal injury under section 5104(b) of the New York Insurance Law;

(b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and

(c) execute, and deliver to the self-insurer, instruments and papers as may be appropriate to secure the rights and obligations of such person and the self-insurer, established by this Part.

(ii) An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law except:

(a) with the written consent of the self-insurer; or

(b) with approval of the court; or

(c) where the amount of the settlement exceeds \$ 50,000.

(6) Other sources of first-party benefits.

(i) Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article VI or VIII of the New York Vehicle and Traffic Law is available and applicable to an eligible injured person in any one accident, the self-insurer is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover from the self-insurer, divided by the number of available and applicable sources of required first-party benefits.

(ii) An eligible injured person shall not recover duplicate benefits for the same elements of loss required to be covered by the self-insurer or any mandatory first-party automobile or no-fault automobile insurance coverage issued in compliance with the laws of another state. If the eligible injured person is entitled to benefits under any such mandatory first-party automobile or no-fault automobile insurance for the same elements of loss required to be covered by the self-insurer, the self-insurer shall be liable only for an amount equal to the proportion that the total amount available from the self-insurer bears to the sum of the amount available from the self-insurer and the amount available under such mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or no-fault automobile insurance law provides unlimited coverage available to an eligible injured person for an element of loss required to be covered by the self-insurer, the obligation of the self-insurer is to share equally for that element of loss with such other mandatory insurance until the \$ 50,000, or \$ 75,000 if provided, limit

available from the self-insurer is exhausted by the payment of that element of loss and any other elements of loss.

* NB Reinstated effective February 1, 2000 per Medical Society of New York v. Neil D. Levin as Superintendent of Insurance, 712 NY2d 745 (Supreme Court, New York County).

Section statutory authority: Vehicle & Traffic Law, §T3A6, §T3A8, §321, §104, §142, §1192; Insurance Law, §A51; Workers' Compensation Law, §A9; Insurance Law, §5108; Vehicle & Traffic Law, §123, § T11A48-A, § 311; Insurance Law, §5104

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