

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 § 65.13 (2003)

**§ \* 65.13 Additional personal injury protection endorsement (New York)**

(a) The declarations page of every new or renewal motor vehicle insurance policy issued on and after November 12, 1991, if additional PIP coverage is purchased by the policyholder, shall state:

(1) the basic economic loss limits (mandatory PIP coverage and, if purchased, OBEL coverage);

(2) the maximum amount payable under additional PIP coverage; and

(3) the aggregate amount payable as PIP benefits, including the maximum amounts payable as work loss benefits, other expenses and the death benefit.

(b)

(1) The Additional Personal Injury Protection Endorsement (New York), set out in this subdivision, is approved and promulgated and is effective for all personal injuries caused by a motor vehicle accident, sustained on and after January 1, 1982, and all of the provisions thereof shall be deemed to be included in all additional personal injury protection endorsements in force on and after such date, in accordance with section 2307(b) of the Insurance Law. Endorsement in effect on or after July 22, 1982 shall be deemed to include coverage for pedestrians struck by motorcycles as provided by section 5103(a)(2) of the New York Insurance Law, as amended by chapter 611 of the Laws of 1982. This endorsement must be furnished to all new insureds with policies effective on and after January 1, 1986, and must be enclosed with the first renewal notices for policies renewed on and after January 1, 1996. This endorsement may be combined with the Mandatory Personal Injury Protection Endorsement (New York) and other coverages, with appropriate language.

## **ADDITIONAL PERSONAL INJURY PROTECTION ENDORSEMENT(New York)**

The Company agrees with the named insured subject to all of the provisions, exclusions and conditions of the Mandatory Personal Injury Protection (Endorsement)(1) (New York), not expressly modified in this (Endorsement)(1) as follows:

### **Additional Personal Injury Protection**

The Company will pay additional first-party benefits to reimburse for extended economic loss on account of personal injuries sustained by an eligible injured person and caused by an accident arising out of the use or operation of a motor vehicle or motorcycle during the policy period. This coverage applies only to motor vehicle accidents which occur on or after January 1, 1982 and motorcycle accidents which occur on or after July 22, 1982, and within the United States of America, its territories or possessions, or Canada.

### **Eligible Injured Person**

Subject to the exclusions and conditions set forth below, an eligible injured person is:

(a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;

(b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle while not occupying a motorcycle;

(c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle while occupying the insured motor vehicle; or

(d) any other person who sustains personal injury arising out of the use or operation of any other motor vehicle (other than a public or livery conveyance) while occupying such other motor vehicle, if such other motor vehicle is being operated by the named insured or any relative.

### **Exclusions**

This coverage does not apply to personal injury sustained by:

(a) any person while occupying a motor vehicle owned by such person with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(b) any person while occupying, or while a pedestrian through being struck by, a motor vehicle owned by the named insured with respect to which additional personal injury protection coverage is not provided under this policy;

(c) any relative while occupying, or while a pedestrian through being struck by, a motor vehicle owned by such relative with respect to which additional personal injury protection coverage is not provided under this policy;

(d) any New York State resident other than the named insured or relative injured through the use or operation of a 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;

(e) any person while occupying a motorcycle;

(f) any person who intentionally causes his own personal injury;\*

(g) 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

(h) 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.\*

#### **Additional First-Party Benefits**

Additional first-party benefits are payments equal to extended economic loss reduced by:

(a) 20 percent of the eligible injured person's loss of earnings from work, to the extent that the extended economic loss covered by this (Endorsement)(1) includes such loss of earnings;

(b) 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, which amounts have not been applied to reduce first-party benefits recovered or recoverable under basic economic loss;

(c) amounts recovered or recoverable by the eligible injured person for any element of extended economic loss covered by this (Endorsement)(1) under any mandatory source of first-party automobile no-fault benefits required by the laws of any state (other than the State of New York) of the United States of America, its possessions or territories, or by the laws of any province of Canada.

### **Extended Economic Loss**

Extended economic loss shall consist of the following:

(a) basic economic loss sustained on account of an accident occurring within the United States of America, its possessions or territories, or Canada, which is not recovered or recoverable under a policy issued in satisfaction of the requirements of article VI or VIII of the New York Vehicle and Traffic Law and article 51 of the New York Insurance Law;

(b) the difference between:

(i) basic economic loss; and

(ii) basic economic loss recomputed in accordance with the time and dollar limits (set out in the declarations);(1) and

((c) an additional death benefit in the amount set out in the declarations).[2]

### **Two or More Motor Vehicles Insured Under This Policy**

The limit of liability under this (Endorsement)(1) applicable to injuries sustained by an eligible injured person while occupying, or while a pedestrian through being struck by, the insured motor vehicle shall be as stated (in the declarations)(1) for that insured motor vehicle. The limit of liability for injuries covered by this (Endorsement)(1) and sustained by an eligible injured person while occupying, or while a pedestrian through being struck by, a motor vehicle, other than the insured motor vehicle, shall be the highest limit stated for this coverage in the declarations for any insured motor vehicle under this policy.

### **Arbitration**

In the event any person making a claim for additional first-party benefits and the Company 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.

### **Subrogation**

In the event of any payment for extended economic loss, the Company is subrogated to the extent of such payments to the rights of the person to whom, or for whose benefit, such payments were made. Such person must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing to prejudice such rights.

### **Other Coverage; Non-duplication**

The eligible injured person shall not recover duplicate benefits for the same elements of loss covered by this (Endorsement)(1) or any other

optional first-party automobile or no-fault automobile insurance coverage.

If an eligible injured person is entitled to New York mandatory and additional personal injury protection benefits under any other policy, and if such eligible injured person is not entitled to New York mandatory personal injury protection benefits under this policy, then the coverage provided under this Additional Personal Injury Protection Endorsement (New York) shall be excess over such other New York mandatory and additional personal injury protection benefits.

When coverage provided under this (Endorsement)(1) applies on an excess basis, it shall apply only in the amount by which the total limit of liability of New York mandatory and additional personal injury protection coverage available under this policy exceeds the total limit of liability for any other applicable New York mandatory and additional personal injury protection coverage.

Subject to the provisions of the preceding three paragraphs, if the eligible injured person is entitled to benefits under any other optional first-party automobile or no-fault automobile insurance for the same elements of loss covered by this (Endorsement)(1) this Company shall be liable only for an amount equal to the proportion that the total amount available under this (Endorsement)(1) bears to the sum of the amounts available under this (Endorsement)(1) and such other optional insurance, for the same element of loss.

(2) The endorsement set forth in this subdivision may include the following provision, together with appropriate schedule(s) of named individuals: "It is agreed that the individual(s) named in this endorsement shall be deemed to be a named insured under the Mandatory Personal Injury Protection Endorsement (New York) and, to the extent applicable, this endorsement."

(3) Deviations from the endorsement set forth in this subdivision may be submitted for approval. Approval, however, will not be granted for changes in form alone or non-substantive or editorial deviations. Furthermore, a multiplicity of options will not be encouraged.

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(1) FOOTNOTE: Companies may substitute the appropriate term, reference or language for the matter set in brackets.

(2) FOOTNOTE: Language in brackets may be deleted if additional death benefits are not offered.

\* FOOTNOTE: These exclusions may be deleted, in the event the company wishes to provide coverage under the indicated circumstances.

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\* 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: Insurance Law, § 2307, § 5103; Vehicle & Traffic Law, § T3A6, § T3A8, § 1192; Workers' Compensation Law, § A9  
Added 65.13 on 11/28/77; amended 65.13 on 12/29/81; amended 65.13 on 12/20/82; repealed and added 65.13(a) on 11/25/92; repealed 65.13 on 11/03/99.