



SARASOTA

# LITIGATOR

## Journal

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## Florida Auto Insurance System Running on Empty

### Unless Legislature Acts, PIP Coverage Expires October 1, 2007

Unless the Florida Legislature takes action this summer, the personal injury protection (PIP) requirement of the state's no-fault auto insurance system will disappear October 1. That would eliminate one of the only defenses against financial ruin that many Floridians enjoy. For many of the state's residents, PIP represents the only health care insurance they own. PIP prevents a policyholder from being overwhelmed by medical bills, the No. 1 cause of personal bankruptcies.



PIP is not without its flaws, however, and the Legislature may choose to ignore rather than fix them and simply let the no-fault insurance law "sunset" in

three months. Although Florida's market is competitive and coverage is readily available, the no-fault system is costly. Above average medical costs and intensive

use of medical services drive PIP costs. PIP health care fraud and abuse are at record levels.

PIP costs too much, say the insurers who originally supported Florida's no-fault system. They have been lobbying the Legislature to let PIP

sunset. Hospitals, physicians and trial lawyers are pushing to keep the system intact but improve it.

"Without the PIP financial safety net, health care providers fear they will treat more and more uninsured

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CASE REVIEW



## VERDICT INCREASED IN CASE AGAINST TEENAGE DRUNK DRIVER

Every step Daniel Travis Kirkland takes reminds him of the dangers of drinking and driving. He was on his way home on March 18, 2004 with a friend when they were rear-ended by Matthew Sexton, a minor at the time, who was leaving

a Bradenton bar after celebrating St. Patrick's Day. After Kirkland's truck came to a rest, he exited the passenger door to assess the damages. Sexton restarted his Jeep and fled the scene of the initial crash. As he was driving away, Sexton struck Kirkland and threw him about 10 feet in the air. Even though he struck Kirkland, Sexton left the scene of the crash. He was later apprehended by Manatee County Sheriff and charged and convicted of driving under the influence with serious bodily injury

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# Insurance System Running On Empty

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auto accident victims with no means to pay their medical bills,” argues attorney Greg Linehan. “That will shift initial medical costs from the insurers to the taxpayers and people who pay health insurance premiums. Trial lawyers, as advocates for the injured, want to keep PIP in place but without the so-called PIP ‘threshold’ which limits their clients’ access to the courts.”

## Economic Trade-offs and Thresholds

Florida adopted a no-fault automobile insurance system in 1971, as an alternative to a tort system. No-fault was proposed to reduce auto insurance premium costs, to lessen the number of lawsuits arising from accidents, and to quickly compensate the injured, regardless of fault.

By ensuring payment of medical, disability (wage loss) and death benefits, regardless of fault, the right to sue for non-economic damages (pain and suffering) was limited.

Under Florida law, motorists currently are required to buy a minimum of \$10,000 of PIP insurance coverage. They can purchase more coverage. PIP pays 80 percent of reasonable medical expenses and 60 percent of loss of income for bodily injury sustained in a motor vehicle accident, without regard to fault. It also provides a \$5,000 death benefit.

PIP generally covers the people named in the policy, relatives residing in the same household, and persons operating the insured motor vehicle.

PIP coverage provides the at-fault driver with immunity from liability for economic damages up to their policy limits and for non-economic damages (pain and suffering) unless injuries are permanent. The immunity protects the insured from tort actions by others. The insured cannot bring suit to recover damages for pain, suffering, mental anguish and inconvenience, except in the following cases: (1) significant and permanent loss of an important bodily function; (2) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; (3) significant and permanent scarring or disfigurement; or (4) death.

This “threshold” means that lawsuits for pain and suffering may be filed in court only if injuries meet those four levels of seriousness.

## Insurance Industry Lobbies Hard

Under intensive lobbying from the insurance industry, the Florida Legislature repeatedly has made it more difficult for the severely injured to reach the “tort threshold,” that is, the ability to bring a lawsuit to recover damages beyond PIP coverage.

In 1976, the Legislature replaced the “dollar threshold,” which specifies a dollar amount that medical costs must exceed before an injured person can pursue a liability claim, with the “verbal threshold” (which distinguishes claims in terms of the description of the injury). In 1978, the Legislature again tightened the verbal threshold by eliminating the right to sue for certain serious non-permanent injuries.

## Threshold Must Go

“The PIP threshold should be eliminated altogether,” argues attorney Greg Linehan.

“As it stands, the PIP threshold acts as a barrier for people to recover damages for pain and suffering, mental anguish and just plain aggravation damages after being injured in a motor vehicle accident,” Linehan says.

Many people are seriously injured in an auto accident, but don’t break bones – a clearly observable injury. However, if a person suffers a spinal disc injury or ligament damage, members of a jury can’t “see” the injury so they think it is not a serious injury. To prove that a person is permanently injured requires a physician’s testimony. So, every case grows in time and money.

According to the American Medical Association guidelines on the evaluation of a permanent injury, a patient should be treated for three to six months before a determination of permanency is made.

“The injured person doesn’t understand why he or she can’t recover money and must go to a doctor for such an extended period of time,” Linehan says. “Only the insurance industry benefits from this arrangement because insurers can hire the best physicians to explain why a person’s injury is not permanent. As a result, the jury doesn’t award any money for pain and suffering, mental anguish, etc.”

## Contact Your Legislator

The Legislature must act this summer or PIP no-fault law will sunset. Encourage your respective lawmakers to keep PIP but make the recommended fixes to help reduce the complexity, fraud and abuse in the system. Add the elimination of the PIP threshold to that list of long-overdue changes.



## Underage DUI

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and fleeing the scene of a crash. Sexton was jailed for approximately one year following his conviction.

Emergency personnel, called to the scene, determined that Kirkland immediately required a trauma center for emergency medical care. Flown to Bayfront Medical Center, he stayed for approximately one week; he returned a few days later for surgery to reconstruct his right knee. In addition, Kirkland suffered a closed head injury, neck injuries, a concussion, sutures to his head



and a low back injury. Kirkland underwent seven surgical procedures for his injuries, including a total knee replacement on his right knee in

August 2006. He continues to seek medical care and attention for his injuries and will likely need three additional knee replacements.

Shortly after suffering these devastating injuries, Kirkland's attorneys, Greg Linehan and Steve Wittmer, offered to settle the claims with Sexton's insurance company, Allstate. Allstate failed to meet the terms of the settlement offer and a lawsuit was filed. In February 2007, after approximately two-and-a-half years of litigation, the case went to trial. Despite the overwhelming facts of the case, Sexton maintained that he was not responsible for either of the crashes or the injuries Kirkland suffered. It was not until the third day of trial that Mr. Sexton finally accepted responsibility for the crash and injuries.

A jury verdict was rendered in the amount of \$326,516.00 for Kirkland on February 8, 2007. After the trial, attorneys Linehan and Wittmer requested an increase in the jury verdict, as it was inadequate for the serious injuries. The Court granted their request and increased the total verdict to \$578,301.00. Kirkland is now attempting to fully recover from his injuries and work in a new field.

## Tell Your Legislators to Keep, But Fix, PIP

### Here's How to Contact Our Local Lawmakers

It seems likely that Florida Legislature will gather in a Special Session this summer to consider the fate of PIP. One of the only defenses against financial ruin that many Floridians enjoy – required PIP insurance coverage through the state's no-fault automobile insurance system - will disappear Oct. 1 unless the Legislature acts this summer. For many of the state's residents, PIP represents the only health care insurance they own. PIP prevents a policyholder from being overwhelmed by medical bills, the No. 1 cause of personal bankruptcies.

Write or call your state legislators.

Lawmakers do pay attention to mail and e-mail, especially the volume of mail they receive from voters on a particular issue.

It doesn't have to be a long letter or conversation. Two or three paragraphs work best. Advocate your position, urge the legislator to support your view and maintain a respectful, reasonable tone. Avoid wild claims and extreme positions.

The main points to make include:

- PIP needs reform but doesn't need to be junked.
- PIP provides a fundamental level of health care insurance that many Floridians could not, or would not, purchase otherwise.
- Eliminate the PIP \$10,000 threshold which effectively prevents many accident victims from suing for mental anguish and other long-term health deficits.

Contact your legislators as they prepare for the Legislature's Special Session on PIP.

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