

New Jersey Court Limits Insurers' PIP Obligations to Unlicensed Drivers

New Jersey's Automobile Reparation Reform Act, otherwise known as the "No Fault Act," requires all automobile liability insurance policies to contain personal injury protection ("PIP") benefits to the named insured and members of his or her family residing in his or her household who sustain bodily injury as a result of a motor vehicle accident, without regard to fault. N.J.S.A. § 39:6A-4(a). PIP benefits include the payment of medical expenses for reasonable, necessary, and appropriate treatment in the amount of \$15,000 at minimum and not to exceed \$250,000. *Id.* at § 39:6A-4.3(e). An insurer may exclude from PIP coverage, among others, any person who was operating the automobile without permission of the vehicle's owner. *Id.* at § 39:6A-7(b)(2).

In a recent ruling handed down by the Superior Court of New Jersey, Appellate Decision, the Court narrowed this exclusion, holding a **vehicle "owner cannot give permission [to operate the vehicle] to a driver who is known to be unlicensed, and therefore, the unlicensed driver is barred from any recovery under the No Fault Act for PIP benefits** under N.J.S.A. 39:6A-7(b)(2)." *Blanco-Sanchez v. Person Service Ins. Co.*, No. L-2607-16, 2019 WL 993111, *1 (N.J. Super. Ct. App. Div. February 28, 2019).

This ruling, although unpublished at this time and therefore merely persuasive case law, serves to guide insurers writing and administering policies in New Jersey. An insurer can now comfortably deny PIP benefits to unlicensed drivers – saving up to \$250,000 in payouts.

In *Blanco-Sanchez*, Norma Blanco-Sanchez, the unlicensed daughter of Vilma Sanchez, was injured in an accident while moving her mother's car at her mother's request. Norma filed an application for PIP benefits under Vilma's policy, which provided PIP benefits of up to \$15,000 but excluded from coverage the "the bodily injury of any person at the time of the accident . . . [who] [w]as operating or occupying a private passenger auto without the permission of the owner or other named insured." The insurance company denied the application for benefits, claiming Norma did not have Vilma's permission to operate the vehicle. The Superior Court – Law Division determined "the plaintiff cannot benefit from his or her own . . . illegal conduct" and upheld the insurance company's denial of PIP benefits.

On appeal, the Appellate Division affirmed the lower court's ruling and noted that while Vilma's policy did not expressly exclude PIP coverage for an unlicensed permissive driver, a vehicle owner cannot grant permission to operate a vehicle to a person who is known to be unlicensed. As such, an unlicensed permissive driver is actually considered to be driving without the owner's permission under N.J.S.A. 39:6A-7(b)(2).

The court had previously issued an opinion involving an unlicensed driver attempting to recover PIP benefits, and the *Blanco-Sanchez* court extended the ruling. In *Martin v. Rutgers Cas. Ins. Co.*, the court denied PIP benefits to the plaintiff-permissive unlicensed driver based on the insurance provision excluding coverage for injury "sustained by a person using a vehicle without a reasonable belief that the person is entitled to do so." 364 N.J. Super. 320, 323 (App. Div. 2002). As the plaintiff drove the vehicle knowing she was unlicensed, she could not have had a reasonable belief she was entitled to do so, and therefore the insurer was right to exclude her from coverage.

The *Blanco-Sanchez* policy does not have this "reasonable belief" exclusion, but the court concluded as a matter of a public policy to apply the reasoning from *Martin* to the case at hand. As such, the court found that an insurer may deny PIP benefits to an unlicensed permissive driver,

as to hold otherwise would “require insurer’s [sic] to provide coverage for unlicensed individuals who are by definition ineligible for coverage and contravene the State’s public policy.”

The court further upheld the New Jersey Supreme Court’s holding in *Proformance Ins. Co. v. Jones*, 185 N.J. 406, 4013 (2005), that a third party injured as a result of the negligence of an unlicensed permissive driver can recover under the insured’s policy.

This holding may influence future New Jersey PIP law. For example, although insurers are now required to provide PIP benefits to a person injured while driving under the influence, the *Blanco-Sanchez* ruling may be applied to any future case brought by a drunk driver for recovery of PIP benefits.

LUCAS AND CAVALIER, LLC is well-versed in the ever-changing automobile liability law, and will continue to monitor this ruling and its potential effects. We can assist insurers with all claims, litigation, and issues involving New Jersey and Pennsylvania auto law.