

AUTO INSURANCE

PIP Coverage: Who Lives in Your Household?

If there is a material misrepresentation, they may not be covered

By Matthew Rachmiel

One of the most important benefits an automobile insurance policy provides is personal injury protection (PIP) medical expense benefits. A named insured, a relative residing with the named insured, or anyone else who is otherwise not covered by automobile insurance, is usually entitled to have her medical bills paid for by the insurer, where those bills arise out of an automobile accident.

There are, however, certain circumstances in which an insurer can refuse to provide PIP benefits to a claimant. One of those circumstances is where the named insured has made a material misrepresentation when applying for insurance. Automobile insurance policies typically exclude coverage for any person making a misrepresentation of a material fact in the application for the policy (usually because the misrepresentation affects the insurer's calculation of the appropriate premium to be charged for the policy). Examples of such material misrepresentations include omissions of names of household members and anticipated users of the vehicle to be insured. These misrepresentations are material because they affect the risk of a claim being made and, in turn, affect the calculation of the premium to be charged.

It seems logical that where a material misrepresentation has occurred, an insurer can deny PIP benefits to its named insured. But what of a situation where the injured person seeking PIP benefits is someone other than the named insured? It also seems logical that an insurer should not be permitted to deny PIP benefits to someone other than its



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named insured. After all, it was the named insured, not the injured person, who made the material misrepresentation to the insurer. Presumably the injured person was not aware of the material misrepresentation.

In *Fisher v. N.J. Automobile Full Ins. Underwriting Ass'n*, 244 N.J. Super. 552 (App. Div. 1988), the Appellate Division held that an insurer could not deny PIP benefits to a passenger who was not privy to of the automobile owner's material misrepresentation to his insurer. (The owner falsely claimed that the vehicle had been registered.) While the insurer could void the policy, it was nonetheless required to

afford the innocent passenger PIP benefits. The *Fisher* court held that one of the purposes of the automobile no-fault scheme was to provide broad protection to automobile accident victims by requiring an insurer to provide prompt payment of medical and other expenses to injured persons without regard to fault and without protracted litigation.

Similarly, in *Dillard v. Hertz Claim Management*, 277 N.J. Super. 448 (App. Div. 1994), *aff'd*, 144 N.J. 326 (1996), the Appellate Division held that in addition to private insurers such as that involved in *Fisher*, the obligation to provide PIP ben-

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efits to innocents also applies to statutorily-contemplated risk exchanges. *Dillard* was affirmed by the New Jersey Supreme Court, 144 N.J. 326 (1996).

Perhaps surprisingly, though, there are circumstances in which an insurer can deny PIP benefits to a claimant who is not its named insured.

In *Palisades Safety & Ins. Assoc. v. Bastien*, 175 N.J. 144 (2003), the named insured falsely represented to his insurer on the policy application that he was single and was the sole driver of the two insured vehicles; he was actually married and his resident wife was also a licensed driver. The wife was presumed to be unaware of her husband's misrepresentations.

The wife subsequently had an accident while driving one of the insured vehicles and made a PIP claim to the insurer. The insurer refused to provide PIP benefits to her and sought to have the policy declared void ab initio due to the named insured husband's material misrepresentations, thus relieving it of the obligation to provide PIP benefits to the wife.

The *Palisades* court upheld the insurer's position, voided the policy and concluded that the insurer could refuse to provide the wife with PIP benefits notwithstanding her ignorance of her husband's misrepresentations. The court commented that a resident spouse is in a "unique position" to have knowledge of her spouse's interactions with the household's automobile insurer, and that responsible adults should be encouraged to discuss important insurance issues among themselves. The court also noted that the strong public policy against insurance fraud favors treating a resident spouse in the same way as the named insured.

Subsequently, however, in *Rutgers Cas. Inc. Co. v. LaCroix*, 194 N.J. 515 (2008), the Supreme Court came to the opposite conclusion where the undisclosed driver was the named insured's resident teenage child. The named insured intentionally omitted his 18-year-old daughter from his policy application—though he did identify two older siblings who, perhaps not coincidentally, owned their own insured vehicles. This daughter did not have her own automobile insurance. After she was involved in an accident while driving one of her father's insured vehicles, the insurer sought to void the policy ab initio, which would then enable it to deny her PIP benefits.

The daughter had limited knowledge of automobile insurance. She essentially knew only that vehicles were supposed to

be insured and that there was supposed to be a proof of insurance card in the vehicle's glove box. She never discussed automobile insurance with her father, did not know the name of the insurer of the household's vehicles and had no understanding of the automobile insurance application process. Further, she had never owned or insured a vehicle herself and did not contribute to paying the premiums for the household's automobile insurance.

After appeals, the Supreme Court concluded that although the carrier could void the policy due to its insured's material misrepresentation, the daughter was nonetheless entitled to PIP benefits as an innocent party. She was a newly licensed driver, only recently of driving age and living with her parents, and thus had a different relationship with the named insured than would a spouse.

The court concluded that equitable principles were the basis to find that the daughter was entitled to PIP benefits. In addition to her ignorance as to the automobile insurance process, she placed her trust in her father to ensure that any vehicle she drove was properly insured. The court also noted that "her subordinate status in her family's hierarchy likely would have inhibited her ability to cure her father's insurance-related misdeeds, even if she was aware of the misrepresentation."

Most recently, an unpublished Appellate Division decision extended the *Palisades* rationale to a household in which the two principals were not married but lived as if they were. In *Geico v. Nelson*, 2012 WL 4771953 (App.Div. 2012), the named insured did not identify her domestic partner as a driver of the two insured vehicles, did not identify him as a resident who would not be listed as a driver, and identified herself as the person who drove both insured vehicles the most. The named insured and her domestic partner had lived together for more than 15 years and were the parents of a child. They were the co-owners of a home and shared in paying the household expenses. Although not married to the named insured, the domestic partner was described by the court as being "spouse-like."

The named insured's domestic partner was then involved in an accident while driving one of the insured vehicles, and he sought PIP benefits under the policy. The insurer sought to deny the injured party's request for PIP benefits.

The Appellate Division concluded that due to the named insured's material misrep-

resentations, the insurer could both void the policy ab initio and deny PIP benefits to the named insured's domestic partner.

The marital status of the couple was not relevant, as the Appellate Division noted that the *Palisades* court's holding was based not on the fact that the claimant and named insured were spouses, but instead on the claimant's status within the household vis-à-vis the named insured. Noting that the domestic partner in *Nelson* was similarly situated to the wife in *Palisades*, the Appellate Division concluded that it would be an "incongruous result" to place the domestic partner in the same position as that of an innocent, and commented that his position bears no resemblance to the daughter in *LaCroix*, again contrasting the daughter's subordinate status in her household.

It thus appears that courts will focus on the relationship and sophistication of the parties within the insured household to determine whether a PIP claimant is an innocent third party entitled to PIP benefits after a material misrepresentation sufficient for the insurer to void the policy. It will not be surprising if the courts further extend an insurer's right to deny PIP benefits to a previously undisclosed resident relative beyond a spouse or "spouse-like" claimant or to other adult resident relatives. Perhaps an insurer will also be able to deny PIP benefits to an otherwise "innocent" child where that child's status in her household's hierarchy is not "subordinate," such as where the child is older, more independent, more experienced, better informed regarding insurance issues and/or typically a contributor to household expenses.

Named insureds should be cognizant that if they do not identify spouses and resident "spouse-like" domestic partners to their insurer, those individuals are unlikely to be provided PIP coverage in the event of an automobile accident. Similarly, insurers should be cognizant that undisclosed teenage children (at least those who are ignorant of automobile insurance and are not involved in the family's insurance buying process) will likely be entitled to PIP coverage. To minimize uncertainty over coverage for a resident relative, insurers typically require on application and renewal forms that the named insured identify all drivers who reside in the household and their relationship to the named insured. Policyholders who fail to disclose this information will do so at their peril, as well as the potential peril of resident relatives who drive. ■