

Case Notes

Insurer made sufficient offer of basic income continuation benefits for as long as disability exists. *Werts v. New Jersey Mfrs. Ins. Co.*, 250 N.J.Super. 580, 595 A.2d 1110 (A.D.1991), certification denied 127 N.J. 554, 606 A.2d 366.

Absence of income continuation benefits covering either named insured and/or household relatives did not require reformation of policy. *Olivero by Olivero v. New Jersey Mfrs. Ins. Co.*, 227 N.J.Super. 367, 547 A.2d 710 (A.D.1988), certification denied 115 N.J. 76, 556 A.2d 1219.

Additional coverage held provided for all persons for whom basic coverage was provided (citing former N.J.A.C. 11:3-7.7). *Clendaniel v. New Jersey Manufacturers Insurance Co.*, 190 N.J.Super. 286, 463 A.2d 369 (App.Div.1983), affirmed in part, reversed in part 96 N.J. 361, 476 A.2d 263 (1984).

Surviving spouse held entitled to lump sum payment of survivor benefits; doubling of benefits due to payment of two premiums for additional protection denied. *Riccio v. New Jersey Manufacturers Insurance Co.*, 179 N.J.Super. 65, 430 A.2d 641 (App.Div.1981).

Insured held entitled to policy reformation due to statutory deficiency of insurer's letter notifying insured of optional coverage selection. *Lumbermens Mutual Casualty Co. v. Carriere*, 170 N.J.Super. 437, 406 A.2d 994 (Law Div.1979).

11:3-7.5 Notice Requirement

(a) Additional personal injury protection benefits that are required to be offered by an insurer shall be offered by the insurer at least annually as part of the Coverage Selection Form required pursuant to N.J.S.A. 39:6A-23 and N.J.A.C. 11:3-15.

1. The buyer's guide and coverage selection form specified at N.J.S.A. 39:6A-23 and any rules promulgated thereunder shall meet the requirements of (a) above.

(b) Each insurer shall distribute copies of this subchapter to every person responsible for the handling and settlement of claims subject to this subchapter. Every insurer shall satisfy itself that all such responsible persons are thoroughly conversant with and are complying with this subchapter.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Changes required by "The Fair Automobile Insurance Reform Act of 1990", P.L. 1990 c.8.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Case Notes

Genuine issue of material fact existed as to whether seller of policy was insurer's agent. *Lilly v. Allstate Ins. Co.*, 218 N.J.Super. 313, 527 A.2d 903 (App.Div.1987).

Insured held entitled to policy reformation to due to statutory deficiency of insurer's letter notifying insured of optional coverage selection. *Lumbermens Mutual Casualty Co. v. Carriere*, 170 N.J.Super. 437, 406 A.2d 994 (Law Div.1979).

11:3-7.6 Cancellation of automobile coverage for nonpayment of premium

(a) This rule applies to all automobile policies delivered or issued for delivery in this State, insuring a single individual or husband and wife resident of the same household, as

named insured, and under which the insured vehicles there-in designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, not rented to others; or

2. Any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not customarily used in the occupation, profession or business of insured, other than farming or ranching, provided, however, that this rule shall not apply to any policy insuring more than four automobiles, or to any policy covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards.

(b) The effective date of the cancellation of a policy for nonpayment of premium shall not be earlier than 10 days prior to the last full day of which premium received by the company prior to the date of preparation of the cancellation notice, would pay for coverage on a pro rata basis. In calculating the effective date of the cancellation as provided in this section, the premium applicable to the coverage provided by the policy and the premium received by the company at or prior to the time cancellation notice was prepared shall be the premium used for the calculation and determination of such effective date.

(c) Cancellation for nonpayment of premium does not include cancellation at the request of a premium finance company or of a producer of record under N.J.A.C. 11:1-3.1.

(d) No cancellation notice shall be mailed prior to 30 days in advance of its effective date.

(e) The rule shall not apply to deposits accompanying New Jersey Personal Automobile Insurance Plan or Commercial Automobile Insurance Plan applications which are insufficient under Plan rules or those of any succeeding residual market availability plan.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Case Notes

Notice of cancellation; no need to postdate default in payment. *Munoz v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 145 N.J. 377, 678 A.2d 1051 (1996).

Additional insured is not "insured" within meaning of statute; regulation does not require that notice of cancellation be given to additional insureds. *Pawlick v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 284 N.J.Super. 629, 666 A.2d 186 (A.D.1995).

Cancellation notice of automobile policy for nonpayment was ineffective to cancel policy. *Christian v. Ormsby*, 267 N.J.Super. 237, 631 A.2d 158 (L.1992).

Genuine issue of material fact existed as to whether seller of policy was insurer's agent, precluding summary judgement on issue of coverage. *Lilly v. Allstate Ins. Co.*, 218 N.J.Super. 313, 527 A.2d 903 (App.Div.1987).

Pedestrian held entitled to benefits under No-Fault Law when struck first by a commercial vehicle and then by a private automobile. *Berg v. The Ohio Casualty Insurance Companies*, 166 N.J.Super. 239, 399 A.2d 675 (Law Div.1979).

SUBCHAPTER 8. NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

11:3-8.1 Scope

This subchapter applies to all automobiles as defined in N.J.S.A. 39:6A-2a, excluding those owned by business entities or insured through any statutorily mandated residual market mechanism, and to all policies or contracts of insurance insuring such automobiles.

New Rule, R.1983 d.190, effective June 6, 1983.
See: 15 N.J.R. 231(a), 15 N.J.R. 927(a).

Section was "General provisions".
Amended by R.1986 d.418, effective October 6, 1986.
See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(b).

Case Notes

Policy provision defining an eligible person as a spouse only if resident in the same household as insured held void; named insured's deletion of estranged wife from coverage held void; reformation of policy ordered. *Matland v. United States Automobile Ass'n*, 174 N.J.Super. 499, 417 A.2d 46 (Law Div.1980).

The extension of N.J.A.C. 11:3-8.1, establishing procedures for the nonrenewal of "No-Fault" coverages to include physical damage coverages is a valid and enforceable exercise of the commissioner's rule making power. *Atty.Gen.F.O.1982, No. 8.*

11:3-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Automobile insurance eligibility points" or "eligibility points" means points calculated under the schedule set forth in N.J.A.C. 11:3-34.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Eligible person" means an individual that meets the qualifications set forth in N.J.A.C. 11:3-34.

"Insurer" includes a group of affiliated companies.

"Renew" means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/nonstandard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

"Standard/non-standard rating plan" means a rating system used by an insurer that provides different base rates for different risks to those insureds who qualify in accordance with the insurer's approved underwriting rules, which has been filed and approved in accordance with N.J.A.C. 11:3-19.

Emergency New Rule, R.1990 d.626, effective November 26, 1990, Operative April 1, 1991 (expired January 25, 1991).

See: 22 N.J.R. 3766(b).

Adopted Concurrent Proposal R.1991 d.89, effective January 25, 1991.
See: 22 N.J.R. 3766(b), 23 N.J.R. 507(a).

Provisions of emergency new rule, R.1990 d.626 readopted without change, operative April 1, 1991.

Case Notes

Where offer to renew insurance is conditioned upon timely premium payment, that fact should be clearly set forth. *Cervone v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 25, 570 A.2d 999 (A.D.1990).

Notices of nonrenewal must be sent in strict compliance with statutory provisions. *Lopez v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 13, 570 A.2d 994 (A.D.1990), certification denied 122 N.J. 131, 584 A.2d 206.

Renewal policy need not be issued until premium is paid. *Lopez v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 13, 570 A.2d 994 (A.D.1990), certification denied 122 N.J. 131, 584 A.2d 206.

Insurer held liable for fire loss where it failed to give notice of policy expiration. *Barbara Corp. v. Bob Maneely Insurance Agency*, 197 N.J.Super. 339, 484 A.2d 1292 (App.Div.1984) (dissenting opinion).

Provision that no insurer shall refuse to renew coverage without consent of the Commissioner upheld against constitutional challenges. *Sheeran v. Nationwide Mutual Insurance Co., Inc.*, 80 N.J. 548, 404 A.2d 625 (1979).

Insurance company cancelling agencies was required to give insureds renewal options indefinitely unless like coverage was available in the market. *Sheeran v. Nationwide Mutual Insurance Co., Inc.*, 159 N.J.Super. 417, 388 A.2d 272 (Ch.Div.1978), affirmed per curiam 163 N.J.Super. 40, 394 A.2d 149 (App.Div.1978), modified and affirmed 80 N.J. 548, 404 A.2d 625 (1979).

11:3-8.3 General provisions

(a) Every insurer shall make an offer to the insured named in a policy subject to this subchapter to renew such policy upon its expiration date, unless a valid notice of nonrenewal or conditioned renewal as specified in (h) below has been sent by the insurer to the insured in accordance with this subchapter.

(b) Each renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal bill. With respect to payment of the renewal premium, notice shall be given not more than 45 days or less than 30 days prior to the due date of the premium and shall clearly state the effect on nonpayment of the premium by the due date.

(c) Subject to changes approved by the Commissioner that had become effective prior to the expiration of the current policy, each renewal shall offer coverage, limits and terms at least as favorable to the insured as the expiring policy, including but not limited to:

ii. For single limit liability coverage, the dollar range calculation that is described in (j)2 above shall be based upon the applicable liability rate. In contrast to the procedure in (j)3i above, the dollar change calcula-

tion shall be made on the basis of a complete rate containing a charge for bodily injury liability, personal injury protection (PIP), and property damage liability.

4. Insurance companies shall submit to the Division of Public Affairs, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625, within seven days of its first use, a copy of the Coverage Selection Form prepared pursuant to this subsection together with:

i. An example showing the calculation of the high and low values for the percentage and dollar change ranges;

ii. Data about the insurance company's territorial rates to confirm that the highest and lowest basic limit Lawsuit Threshold rates have been used in the example. The filing of a rating page showing a list of basic limit rates by territory shall be sufficient;

iii. Data about the insurance company's increased limits liability rating, vehicle usage, and type of driver factors to confirm that the proper relativities have been used in the example. The filing of the appropriate rating pages shall be sufficient; and

iv. For those insurance companies offering only single limit liability coverage, an explanation of the procedure used to develop the bodily injury liability rate from which the percentage and dollar change amounts have been determined. This explanation shall include an example of the calculation methodology.

(k) Insurance companies which do not offer all the coverages described in the Coverage Selection Form shall list those coverages on the form and shall clearly state that those coverages are not available from that company.

New Rule, R.1989 d.117, effective February 21, 1989.
See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Section was "Statement on the possible coordination of other health benefits coverage with the personal injury protection medical expense options".

Amended by R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

Amendments made to bring rule in line with changes in N.J.S.A. 39:6A-23 made by P.L. 1988 c.119.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to be consistent with N.J.A.C. 11:3-15.6; the text of the Coverage Selection Form is amended both to clarify the current Form and requirements and to respond to changes required by the "Fair Automobile Insurance Reform Act of 1990".
R.1992 d.218, effective May 18, 1992.

See: 24 N.J.R. 523(a), 24 N.J.R. 1898(b).

In (h), added Note to 3, Warning statement to 7 and 8, and prohibition against domicile misstatement to (2).

Amended by R.1994 d.195, effective April 18, 1994.

See: 26 N.J.R. 85(a), 26 N.J.R. 1659(a).

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Case Notes

Buyer's guide and coverage selection form in regulations promulgated by Insurance Commissioner to implement revisions to no-fault automobile insurance law did not contain inherent bias or confusion on basis that Commissioner made reference to "basic limit" as opposed to

"basic tort option." *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Buyer's guide and coverage selection form which gave basic tort option, as opposed to no-threshold option, a favorite status, was justifiable. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D. 1989), certification denied 118 N.J. 181, 570 A.2d 950.

Insurance Commissioner acted properly when he required that coverage selection form contain provision referring consumers to their automobile insurance companies in event of questions on coverage. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Insurance Commissioner's proposed regulations, which implemented revisions to nonfault automobile insurance law requiring consumers to select between two options of coverage for automobile accident-related bodily injury, did not have to require that coverage selection form inform consumers of exact dollar amount of premium savings arising from election. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Model coverage selection form, proposed by regulations promulgated by Insurance Commissioner for implementing legislative revisions to no-fault automobile insurance law requiring consumers to select between two options of coverage for automobile accident-related bodily injury. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Statute requiring that no-fault automobile insurance coverage selection form state the percentage difference in premium rates or dollar savings between the two tort options for suing for noneconomic loss was not inconsistent with statute requiring that coverage selection form identify range of premium rate credit or dollar savings or both. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

When promulgating regulations to implement revisions to no-fault automobile insurance law, Commissioner's use of term "lawsuit threshold" in buyer's guide and coverage selection form, as opposed to "verbal threshold", did not lead to confusion. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

11:3-15.8 (Reserved)

11:3-15.9 Use of Coverage Selection Form

(a) For all new policies, an insurance company or an insurance producer with the company's binding authority shall receive a signed Coverage Selection Form indicating the prospective insured's coverage choices. Coverage shall not become effective until the signed Coverage Selection Form is received from the named insured, unless otherwise authorized by law.

(b) For all policy renewals, the insurance company shall provide its Coverage Selection Form to the named insured with the notice of renewal. For mid-term policy changes, the insurance company shall provide its Coverage Selection Form to the named insured upon his request for a mid-term change when the change is required to be made on the Form. Coverage may be renewed or amended, with or without the signed Coverage Selection Form from the named insured, except as set forth in (b)1i through vi below where a signed Coverage Selection Form is required.

1. An insurance company may require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any coverage change; provided, however, that an insurance

company shall require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any of the coverage changes in (b)1i to vi below.

- i. The election of the "No Threshold" option;
- ii. Changing from the "No Threshold" option to the "Lawsuit Threshold" option;
- iii. When the named insured desires collision or comprehensive deductibles other than \$500.00;
- iv. When the named insured desires to change to the \$500.00 deductible for collision or comprehensive coverage;
- v. When the named insured desires his health insurance carrier to be the primary insurer for PIP medical expense coverage benefits; or
- vi. When the named insured desires his auto insurance carrier to be the primary insurer for PIP medical expense coverage benefits.

(c) The coverage changes in (b)1i through vi above shall become effective in the following manner, except when coverage for comprehensive or collision is effected by a required inspection pursuant to N.J.A.C. 11:3-36.

1. For all new policies and mid-term policy changes required to be made on the Coverage Selection Form, the choices on the Coverage Selection Form shall be effective the day following the date of postmark or, when personal delivery is made or the postmark is illegible, the day following receipt of the Form by the insurance company or an insurance producer with the company's binding authority;

2. For changes upon renewal, the changes required to be made on the Coverage Selection Form shall be effective on the date of the next policy renewal if postmarked or received by the insurance company or by an insurance producer with the company's binding authority prior to the renewal date.

New Rule, R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to clarify when a Coverage Selection Form must be used and when the changes made thereon become effective.

R.1992 d.218, effective May 18, 1992.

See: 24 N.J.R. 523(a), 24 N.J.R. 1898(b).

In (c), added exception regarding comprehensive and collision.

Case Notes

Insured was not entitled to jury trial in suit for reformation of automobile policy. *Weinisch v. Sawyer*, 123 N.J. 333, 587 A.2d 615 (1991).

Direct writing insurer was not responsible for insured's inadequate underinsured motorist (UIM) coverage. *Andriani v. New Jersey Mfrs. Ins. Co.*, 245 N.J.Super. 252, 584 A.2d 875 (A.D.1991), certification denied 126 N.J. 327, 598 A.2d 886.

Client-initiated contacts with insurance brokers can result in broker's duty to exercise skill and possess knowledge concerning coverages. *Avery v. Arthur E. Armitage Agency*, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Insurer's buyer's guide and coverage selection form complied with regulations regarding optional underinsured motorist coverage. *Avery v. Arthur E. Armitage Agency*, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Insured was not entitled to underinsured motorist benefits for bodily injury; insurance carried by two vehicles which struck his automobile was greater than the amount of uninsured motorist coverage which he could have obtained. *Pinto v. Garretson*, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

Insurer and agent were not liable in allegedly failing to inform insured about higher levels of underinsured motorist coverage. *Pinto v. Garretson*, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

11:3-15.10 Effect on other notice requirements

The Buyer's Guide and written notice incorporate and therefore satisfy any and all other notice requirements previously set forth for the coverage options required by the New Jersey Automobile Reparation Reform Act, the New Jersey Automobile Insurance Reform Act of 1982 and the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984.

Recodified from N.J.A.C. 11:3-15.9, R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

11:3-15.11 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as prescribed by law.

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Recodified from N.J.A.C. 11:3-15.10, R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-16.1 Purpose and scope

(a) This subchapter establishes data, filing format and preferred ratemaking requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq. and as required by N.J.S.A. 17:29A-36.2.