



The Pennsylvania Limited Tort Option

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Introduction

Since 1990, the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL) has required that insurers issuing private passenger motor vehicle insurance policies with respect to vehicles registered in the Commonwealth offer as a cost-reducing measure what is known as the “**limited tort option**” limiting the rights of the named insureds and other parties qualifying as insureds under the policy to sue for “**non-economic detriment**” (i.e., pain and suffering) to cases in which the plaintiff suffered “**serious injury**” (defined as “**death, serious impairment of body function, or permanent serious disfigurement**”), though they retain the right to sue for any unreimbursed economic losses (typically medical expenses or lost earnings exceeding the amount of available first-party benefits coverage, property damage and other out-of-pocket losses). The alternative “**full tort option**” permits the plaintiff to sue in tort not only for all unreimbursed economic losses, but also for pain and suffering without regard to the severity of the injuries suffered.

The applicable tort option can obviously have a significant impact upon the value of claims and, in some cases, it can also serve to extend the governing statute of limitations.

Where it is clear that only minor injuries having little impact upon the plaintiff's activities are involved, the question of whether a limited tort claimant suffered a “serious injury” permitting recovery of damages for pain and suffering is one which can be successfully resolved through a motion for summary judgment. However, because the issue of whether a claimant suffered “serious injury” is considered an issue of fact which is reserved for a jury to decide in all but the clearest of cases, it can be difficult to secure the dismissal of such claims through summary judgment, with the result that there is often no alternative other than to compromise such claims, or to take them to trial to

obtain a jury determination as to whether “serious injury” occurred.

Application of Tort Options

Any “named insured” (defined as an individual identified by name as an insured) may make the tort option election, binding all other named insureds, as well as any other “insureds” under the policy (a term defined to include any individual residing in the same household of the named insured who is a spouse, relative, or minor in the custody of either the named insured, a spouse, or a relative of the named insured) [§§1705(a)(2), 1705(f)].

Once such an election is made, it remains in effect until the insurer receives a properly executed option form changing the election [§1705(b)(1)].

A person who neither owns a currently registered private passenger motor vehicle, nor qualifies as an insured under a policy covering such a vehicle is afforded full tort rights [§1705(b)(3)].

In recognition of the concept that someone who does not maintain liability insurance coverage on his own vehicle should not benefit from that misconduct by obtaining full tort rights, the MVFRL expressly provides that the owner of a registered, but uninsured private passenger motor vehicle is “deemed” to have selected the limited tort option [§1705(a)(5)].

However, despite that expression of public policy, the courts have held that the owner of a registered, uninsured vehicle is entitled to full tort rights if he qualifies as an “insured” under another policy which provides full tort coverage *and* he is not occupying his own uninsured vehicle at the time of the accident. *Berger v. Rinaldi*, 651 A.2d 553 (Pa.Super. 1994). It should be noted that this result would appear inconsistent with the approach later taken by our Supreme Court with regard to the interpretation of similar

statutory language appearing at §1714 of the MVFRL relating to parties ineligible to receive first-party benefits, it having been held that the owner of a registered, uninsured vehicle is ineligible for first-party benefits under *any* MVFRL policy. *Swords v. Harleysville Mutual Ins. Co.*, 883 A.2d 562 (Pa. 2005), (*denying first-party benefits to son who owned registered, uninsured vehicle in connection with accident which occurred while using his father’s insured car, stating that it was clearly the intention of the Legislature to “penalize” owners of registered vehicles who fail to maintain financial responsibility “regardless of what vehicle in which they are injured.”*)

As discussed below, recent case law would also suggest that the owner of a registered, uninsured vehicle enjoys full tort rights if he is injured while a pedestrian.

The statutory imposition of the limited tort option upon the owners of registered, uninsured vehicles does not extend to their minor children, who enjoy full tort rights. *Holland v. Marcy*, 883 A.2d 449 (Pa. 2005).

Nor is the spouse of a registered, uninsured vehicle owner automatically deemed to be subject to the limited tort option. However, case law would indicate that a spouse will be subject to limited tort *if* (1) the spouse holds a recognizable property right in the vehicle (which may exist under marital property laws,) *and* (2) there are sufficient “indicia of ownership” to establish that the spouse is a *de facto* owner of the vehicle, which can be shown where the spouse had his or her own keys, was a frequent user of the vehicle, or otherwise enjoyed the use and benefits of the vehicle. Where such evidence exists, the question of which spouse holds legal title to the uninsured vehicle is not controlling. *See, e.g., Ickes v. Burkes*, 713 A.2d 653 (Pa.Super. 1998), (*holding that wife injured as a passenger in husband’s uninsured truck was not subject to limited tort where she did not have her own keys to the vehicle, she did not know how to operate its manual transmission, she did not know the vehicle was uninsured, her husband had exclusive control over the use of the vehicle and there was no indication that the wife had a marital property right in the vehicle*); *Allen v. Merriweather*, 605 A.2d 424

(Pa. Super. 1992), appeal denied, 620 A.2d 489 (Pa. 1993), (holding that husband was ineligible for first-party medical benefits under §1714 of MVFRL where record before the court on summary judgment motion indicated that husband was injured while operating uninsured vehicle registered to his wife, husband resided with his wife and was aware that vehicle was uninsured, husband was permitted to operate the vehicle and “enjoyed the use and benefits” of the vehicle, and husband had a clear marital property right in the uninsured vehicle, which was acquired after marriage) .

It must also be understood that the MVFRL does not subject *all* uninsured vehicle owners to the limited tort option, but instead plainly does so only to those who have registered their uninsured vehicles. While this would appear to make perfect sense where an uninsured and unregistered car is sitting on blocks in the owner’s yard, it makes little sense from a public policy perspective when the car is being operated with expired or stolen tags. Ironically, the inescapable conclusion to be drawn from the language of the statute, which speaks only of vehicles which are *both* registered and uninsured is that an individual who has done neither retains full tort rights, even if he is operating his uninsured and unregistered vehicle when an accident occurs. *See, e.g., Allen v. Erie Ins. Co., 534 A.2d 839 (1987), (suggesting that an individual who was denied medical benefits under a similarly worded section of the statute regarding ineligible first-party benefit claimants could have avoided that problem by either purchasing adequate insurance, or by not registering his vehicle).*

It has recently been held that §1705, which speaks only of vehicle drivers and passengers, does not apply to limit a pedestrian’s right of recovery. Accordingly, pedestrians are not subject to limited tort, regardless of their status as insureds under limited tort policies. *L.S. v. David Eschbach, Jr., Inc., 874 A.2d 1150 (Pa. 2005)*. Although that case involved claims on the part of an “innocent” minor child who was struck by a car after exiting her school bus, the Court’s reasoning would seemingly compel the same result if the pedestrian were instead the owner of a registered, uninsured vehicle.

If a person qualifies as an insured under two or more policies with conflicting tort options, the option elected on the policy covering the vehicle involved in the accident is controlling, and if no vehicle insured under the conflicting policies is involved in the accident, the “full tort” option applies [§1705(b)(2)].

If a person is a named insured on a limited tort policy, but qualifies as an insured under a full tort policy covering the vehicle occupied in the accident, full tort applies. *Hoffman v. Troncelliti*, 839 A.2d 1013 (Pa. 2003).

As discussed below, the limited tort option obviously does not prevent the recovery of damages for pain and suffering where the claimant suffered a “serious injury” in the form of “death, serious impairment of body function or permanent disfigurement”. The MVFRL also contains six exceptions to the applicability of the limited tort option regardless of whether “serious injury” is involved, providing that an individual otherwise bound by the limited tort option retains full tort rights against *convicted* drunk or stoned drivers, operators of out-of- state vehicles, people trying to injure or kill themselves or others, uninsured motorists, persons in the business of designing, manufacturing, maintaining or repairing motor vehicles (if the claim is based upon a vehicle defect), or if the injured party is the occupant of a vehicle other than a “private passenger motor vehicle”, such as a motorcycle, taxi, tractor-trailer or bus. Specifically, §1705(d) contains the following list of exceptions:

(1) An individual otherwise bound by the limited tort election who sustains damages in a motor vehicle accident as the consequence of the fault of another person may recover damages as if the individual damaged had elected the full tort alternative whenever the person at fault:

(i) is convicted, or accepts Accelerated Rehabilitative Disposition (ARD) for driving under the influence of alcohol or a controlled substance ...; [*Note that this exception is narrowly confined to cases in which the tortfeasor is actually convicted or accepts ARD.*]

(ii) is operating a motor vehicle registered in another state; [*Note that this exception applies only to cases in which the tortfeasor is*

operating a vehicle registered out of state - it does not apply whenever an out-of-state driver is involved.]

(iii) intends to injure himself or another person ... ;

(iv) has not maintained financial responsibility as required by this chapter

[Note: *The above four exceptions do not apply to UM or UIM claims.*]

(2) An individual otherwise bound by the limited tort election shall retain full tort rights with respect to claims against a person in the business of designing, manufacturing, repairing or maintaining motor vehicles arising out of a defect in such motor vehicle which is caused by or not corrected by an act or omission in the course of such business, other than a defect in a motor vehicle which is operated by such business.

(3) An individual otherwise bound by the limited tort election shall retain full tort rights if injured while an occupant of a motor vehicle other than a private passenger motor vehicle.

It was recently held that the exception to limited tort with respect to claims against the operators of vehicles registered in other states does not apply to accidents involving vehicles owned by the federal government, whose vehicles are not registered in any state. Therefore, a claimant is bound by the limited tort option in connection with a suit against the operator of a U.S. Postal Service truck. *Brown v. United States of America, 2006 U.S. Dist. LEXIS 926 (E.D.Pa., January 11, 2006).*

Private Passenger Motor Vehicles

The term, “private passenger motor vehicle”, which appears in several of the provisions discussed previously, is defined at §1702 of the MVFRL as referring to a four-wheel motor vehicle which is:

- Not a recreational vehicle not intended for highway use;

- Is insured by a natural person;
- Is a passenger car, neither used as a public or livery conveyance, nor rented to others;
- Has a gross weight not exceeding 9,000 lbs.;
- Is not principally used for commercial purposes other than farming;
- Is not insured exclusively under a policy covering garage, auto sales agency repair shop, service station or public parking operation hazards.

While there has been relatively little litigation relating to this definition, the statutory language would plainly exempt motorcycles, riding mowers, ATV's, vehicles insured by corporations rather than people, delivery vehicles, taxi cabs, rental cars, buses and trolleys, tractor-trailers, etc. The Insurance Commissioner has issued a questionable advisory opinion indicating that no vehicles insured on a commercial automobile insurance policy can qualify as private passenger motor vehicles.

Meaning of “Serious Injury”

To successfully maintain a claim for pain and suffering where no exception applies, a limited tort plaintiff must show that he suffered a “**serious injury**” [§1705(a)], a term defined at §1702 of the statute as personal injury resulting in “**death, serious impairment of body function or permanent serious disfigurement**”.

Death and permanent serious disfigurement being relatively straightforward concepts, most of the litigation regarding the meaning of serious injury has centered around the question of what constitutes a serious impairment of body function, how that issue is to be determined, and the extent to which the issue can be decided before trial through motions for summary judgment.

At one time, the Pennsylvania Courts interpreted the MVFRL as requiring that the trial judge initially make a threshold legal determination as to whether a limited tort plaintiff suffered a serious injury before a claim for non-economic detriment could be

presented to a jury.

That approach was later rejected by the Supreme Court of Pennsylvania in *Washington v. Baxter*, 719 A.2d 733 (Pa. 1998), in which it was held that the issue should instead be decided by a jury, except in the clearest of cases. In arriving at that conclusion, the Court considered the legislative history of MVFRL and determined that efforts to include language placing that responsibility solely upon the trial judge had been overwhelmingly rejected by both houses of the General Assembly. Looking to the Michigan law upon which the MVFRL had been modeled, the Court held that the determination of whether a serious injury occurred is not to be routinely made by the trial judge, but should instead be left to a jury “*unless reasonable minds could not differ on the issue of whether a serious injury had been sustained.*” In other words, the Court held that the ultimate determination of whether the limited tort option bars a plaintiff’s claims “*should be made by the jury in all but the clearest of cases,*” with all inferences being resolved in favor of the non-moving party if the issue is presented by motion for summary judgment.

The *Baxter* Court also approved a two-part test for determining whether the plaintiff suffered a “serious impairment of body function”, consisting of the following questions:

- (1) What body function, if any, was impaired because of injuries sustained in a motor vehicle accident?
- (2) Was the impairment of the body function serious?

The Court stated that the focus of those inquiries is not on the injuries themselves, but on how the injuries affected a particular body function; that medical testimony will generally be necessary to establish the existence, extent and permanency of the impairment and that, in determining if the impairment was serious, several factors should be considered including the extent of the impairment, the length of time it lasted, the

treatment required to correct it, and any other relevant factors, adding that an impairment need not be permanent to be serious.

Summary judgment on this issue is still possible, as illustrated by the *Baxter* case itself, in which the Court went on to hold that the plaintiff's injuries were not "serious" and affirmed the trial court's entry of summary judgment in favor of the defendant. In so doing, the Court reviewed the medical evidence indicating that the plaintiff suffered injury to his right foot and was immediately treated at a hospital emergency room, where his injuries were described as mild and diagnosed as contusions, sprains and strains. He was discharged from the emergency room in a few hours, after which he missed 4 to 5 days from work at his full-time job and four of his five weekly shifts at a part-time job. About 6 months after the accident, one of his physicians stated that there appeared to be some kind of arthritis or joint coalition in the right foot and that he might need to consider using orthotic heel lifts. At his deposition about 1 year after the accident, the plaintiff testified that his foot caused him to suffer pain approximately every other week, but he was still able to perform his work duties and, aside from using a riding mower, he was able to engage in his normal daily activities. Even taking that evidence in the light most favorable to the plaintiff, the Court found that reasonable minds could not differ on the conclusion that his injuries were not serious.

Summary judgment was also successfully obtained in the more recent case of *McGee v. Muldowney*, 750 A.2d 912 (Pa. Super. 2000), in which the plaintiff was diagnosed as suffering only cervical, thoracic and lumbar strain and sprain with radiculopathy to the right hand, even though the plaintiff maintained that it was necessary for him to stop working as a plumber and to begin a new trade as an electrician as a result of his injuries. The court held that the plaintiff's subjective allegations did not, absent objective medical evidence, permit a finding of serious injury. Although the plaintiff established that he suffered some injury to his back and shoulder, the court stated that he failed to establish that those injuries "resulted in such substantial interference with any bodily

function as to permit a conclusion that the injuries have resulted in a serious impact on his life for an extended period of time”, and thus the issue of whether he suffered a serious injury “was not to be left to a jury”.

On the other hand, it has been recognized that soft-tissue injuries *can* constitute serious injury for purposes of the limited tort option, or at least that it is error for a court to instruct a jury that such injuries *cannot* amount to a serious injury. *Chanthavong v. Tran*, 682 A.2d 334 (Pa.Super. 1996).

With proper proof, one court has held that the same could be true of mental disorders or psychiatric problems, though presumably, such conditions would have to result in the impairment of body function. *Hames v. Philadelphia Housing Authority*, 696 A.2d 880 (Pa.Cmwlth. 1997).

It has also recently been recognized that the manner in which a particular injury affects a specific plaintiff must be considered relevant in determining whether a serious injury has occurred. Noting that an injury which is of little import to one person, such as a broken pinky finger, may be hugely significant to another, the Superior Court recently offered the following comments on this subject: “*Thus, the broken finger may represent a serious impairment to the violinist, but very few others, and the wrist injury that leads to an inability to control a jackhammer represents a serious impairment to the heavy laborer, but not necessarily the violinist. This notion, though previously unstated by our Courts, is basically little more than a restatement of the principle that a defendant takes the plaintiff as he finds him.*” *Long v. Mejia*, 2006 Pa. Super. LEXIS 291 (March 30, 2006).

Among the cases in which it was held that summary judgment was improperly entered on the basis of the claimant’s limited tort election is the decision in *Leonelli v. McMullen*, 700 A.2d 525 (Pa.Super. 1997), in which the plaintiff immediately appeared at an emergency room with complaints of neck and back pain, was released with normal x-ray findings and then sought only sporadic and limited medical treatment for injuries

to her neck and back during most of the first two years following her accident. The opinion indicates that this failure to seek further medical attention was due to the fact that she was unemployed, uninsured and lacked sufficient funds to pay for it. When she later obtained a job 15 months after the accident and secured insurance coverage, she underwent an MRI which revealed a herniated disc and two bulging discs. She then sought further medical attention including injections and anti-inflammatory medications. She was able to work full-time as a medical transcriber at that point, but often wore ice packs on her neck and back while working at her computer terminal. The court held that the trial judge had improperly determined that the plaintiff's injuries were not serious as a matter of law and that the plaintiff had produced sufficient evidence for a jury to decide that she had suffered serious injury.

In arriving at that result, the court noted that the fact that the plaintiff was able to secure employment 15 months after her accident and was able to work full-time did not conclusively establish that her injuries were not serious. While an ability to work may be a factor in determining the severity of her injuries, it does not constitute a tacit admission that a claimant's injuries are not serious. Nor was the fact that the plaintiff delayed 7 weeks before seeing a physician following her emergency room visit determinative since her reluctance to seek medical attention could be fairly attributable to the fact that she was unemployed and uninsured. On the whole, the court found that the record included sufficient evidence tending to show that her injuries "*substantially interfered with her normal activities for a substantial period of time*", which was all that was needed to reach a jury on the issue even in the face of earlier case law in which the "serious injury" issue was viewed as a question to be initially decided by the trial judge.

Another illustration of a case in which it was held that the trial judge improperly substituted his view of the evidence for that of the jury on this issue is the decision of the Superior Court in *Robinson v. Upole*, 750 A.2d 339 (Pa.Super. 2000), in which the trial

court granted judgment N.O.V. to a defendant, finding that the plaintiff had failed to produce sufficient evidence of a serious injury to permit the recovery of non-economic damages. In seeking to uphold that decision, the defense argued that the plaintiff had not suffered serious injury because she testified that, although she had some pain, there was nothing which she could not do. The plaintiff offered evidence indicating that she suffered from chronic pain syndrome, fibromyalgia and sleep impairment as a result of the accident and testified that, because of her pain, she had severely reduced, if not eliminated physical recreational activities, had to hire a housekeeper and no longer had a social life.

Citing the test adopted in *Baxter*, the appellate court noted that the proper focus in such cases is not on the injuries suffered, but is instead the effect of the injuries on a body function. In holding that the trial judge had improperly disregarded the jury's verdict, the court pointed to evidence that the plaintiff had returned to work with limitations, could no longer perform many physical activities including housework and recreation without pain, and could not sleep. Therefore, the court held that reasonable minds could differ as to whether the claimant has suffered a serious injury for purposes of the MVFRL.

Other cases in which it was held that judgment was improperly entered for defendants in limited tort cases include *Kelly v. Ziolk*, 734 A.2d 893 (Pa.Super. 1999), (holding that evidence created jury question where plaintiff suffered a herniated disc which caused pinching sensations in his legs and plaintiff testified that he suffered back pain when he engaged in physical activity or sat for long periods, prevented him from running and made it difficult to play with his child); *Furman v. Shapiro*, 721 A.2d 1125 (Pa.Super. 1998), (holding that sufficient evidence was offered to present jury question of serious injury where plaintiff was diagnosed with several back conditions including a bulging disc confirmed by MRI studies and indicated that she had to reduce her work schedule because she could not stay in one position for long periods, could not walk more

than one block at a time and was prevented by her disc injury from bathing her child); *Hellings v. Bowman*, 744 A.2d 274 (Pa.Super. 1999), (holding that plaintiff who suffered herniated disc, degenerative disc disease and facet arthritis offered sufficient evidence of serious injury where he indicated that he suffered numbness in his knee, sharp pain in his hip and back spasms and could not ride in his wife's car, or engage in various physical activities).

Obviously, the question of whether a particular plaintiff has suffered a serious injury for purposes of the limited tort option is one which will be governed by the specific facts of each case and perhaps the disposition of the judge to which the matter is assigned, there being some lack of consistency in the case law on the subject.

Where the issue reaches a jury, it has been held that a jury cannot be told that a plaintiff elected the limited tort option, or did so in return for payment of a lower premium because such evidence is irrelevant, misleading and prejudicial, with the result that the jury is simply asked to determine whether the plaintiff suffered a "serious injury" and is offered an explanation of the criteria to be used in making that determination, without any further elaboration as to why the plaintiff has that burden of proof. *Price v. Guy*, 735 A.2d 668 (Pa. 1999).

Impact Upon Statute of Limitations

Negligence actions are typically subject to a two-year statute of limitations in Pennsylvania, running from the date on which the injury occurred. 42 Pa.C.S. §5524(2).

However, that is not necessarily the case with respect to a suit on the part of a limited tort plaintiff for non-economic detriment. Instead, it has been held that the statute of limitations on such claims does not begin to run until the claimant knows, or has reason to know that he suffered a "serious injury". *Walls v. Scheckler*, 700 A.2d 532 (Pa.Super. 1997), (holding that the "discovery rule" operated to extend the statute of limitations to a limited tort claimant whose injuries changed and became more serious

as time passed).

On the other hand, our courts have declined to extend the time in which suit must be filed with respect to claims for economic losses such as excess medical expenses and lost earnings. The statute of limitations on such claims starts to run on the accident date, even if medical expenses and lost earnings initially fall within the amount of available first-party coverage. To preserve a right to sue for economic losses which may later exceed the amount of available first-party coverage, the plaintiff must sue within two years of the accident date and support any claim for future economic losses through expert testimony. *Haines v. Jones*, 830 A.2d 579 (Pa.Super. 2003).

In line with those authorities, it should be noted that two different statutes of limitations might conceivably apply to the same limited tort plaintiff's claims, one with respect to economic losses running from the date of the accident and another with respect to any claim for pain and suffering, running from the date on which the plaintiff either knew, or should have known that a serious injury had occurred. This can potentially create complications (and partial defenses) not only when both economic and non-economic losses subject to differing statutes of limitations are asserted in a single case, but also if a claimant attempts to file two separate suits for those different losses, a practice which would seemingly run afoul of the general rule that a plaintiff cannot "split" his cause of action, filing multiple suits for different categories of damage based upon the same acts of negligence.

While there is currently no Pennsylvania case law considering such a situation under the MVFRL, some guidance as to how the courts might approach this issue can be found in cases involving the former No-Fault Act, which abolished civil tort liability for vehicular injuries except in cases of death, serious injury, or where the claimant's medical expenses exceeded a monetary tort threshold of \$750. Consistent with the view which is currently taken under the MVFRL, the Supreme Court held that the statute of limitations on an accident victim's tort claims under the No-Fault Act did not begin to run

until he knew, or should have known that his medical expenses would exceed the tort threshold. *Bond v. Gallen*, 469 A.2d 556 (Pa. 1983). Later, the Court was presented with a case in which the plaintiffs filed two separate suits stemming from the same accident, the first of which was filed in October, 1978 for property damage to their vehicle and the second of which was filed in December, 1979 for personal injuries. Both were filed within the 2-year statute of limitations for negligence claims. Although each suit was filed in a timely manner, the Court held that the plaintiffs had impermissibly split their cause of action. The Court observed that the cause of action for property damage arose on the accident date and that the cause of action for personal injuries did not arise until some months later when the monetary threshold was met. Nevertheless, because both causes of action were mature well *before* the first suit was filed, the Court held that the plaintiffs were required to bring all of their claims in that suit and that their failure to do so barred the second action. At the same time, the Court noted that this would not be so if the tort threshold for a personal injury suit had not yet been reached at the time the suit for property damage was filed, holding that a personal injury suit arising *after* the filing of an action for property damage would not be barred. *Fitzpatrick v. Branoff*, 470 A.2d 521 (Pa. 1983).

Practical Considerations

Except in those cases in which it is obvious that the limited tort threshold will not apply (e.g., death or obviously significant injury claims, claims on the part of pedestrians, claims against the operators of out-of-state vehicles, claims for only economic losses such as property damage or excess medical expenses, etc.) it is essential that an insurer obtain (1) information as to whether the claimant was the owner of a registered, uninsured private passenger motor vehicle at the time of the accident; (2) information regarding the identities of all others residing with the insured at the time of the accident, and (3) full particulars regarding tort option elections on any auto insurance policy or policies

under which he or she was a “named insured” and the same information with regard to any other auto insurance policies issued to others residing in the same household under which the claimant might potentially qualify as an “insured”. Where the claimant is the spouse of a registered, uninsured vehicle owner, information should be obtained with regard to when the couple was married and how, when and by whom the vehicle was purchased or acquired (in order to determine whether the claimant held a financial or marital property right in the vehicle) and facts should be developed with regard to whether the claimant “enjoyed the use and benefits” of the vehicle.

In the case of policies under which the claimant was either a named insured, or an insured family member, the claimant should ordinarily be in a position to furnish documentation of the tort option elections in the form of policy declarations pages and confirmation that the policies were actually in force on the accident date can often be readily obtained through a telephone call to the agent.

Some insurers routinely provide a form “affidavit” for execution by the claimant with regard to these issues, though it should be noted that search requests through the Pennsylvania Department of Transportation will occasionally yield contrary information.

Of course, where claims are in suit, these issues can be more fully explored through interrogatories, document requests and depositions.

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