PATIENT ADVOCATE FOUNDATION
753 Thimble Shoals Boulevard, Suite B Newport News, Virginia 23606
TEL: 757.873.6668 FAX: 757.873.8999 1.800.532.5274
E-MAIL: help@patientadvocate.org INTERNET: http://www.patientadvocate.org

January 8, 2001

Sherry Brenner
South Philadelphia Review
NW Corner 12th & Porter St.
Philadelphia, PA 19148

Dear Ms. Brenner

Your city has a hero and we would like to have the opportunity to introduce him to you. Stuart Carpey , Esquire, is an attorney in the firm of Kreithen Baron and Carpey, PC. For almost five years, through volunteer services to the Patient Advocate Foundation as a member of our National Legal Resource Network, Mr. Carpey has provided services to patients who have been denied access to health care. He has provided legal counseling to patients confronting denial of insurance coverage in life or death situations, employment discrimination as a result of their cancer diagnosis, and/or financial crisis intervention services.

Mr. Carpey is a member of the National Legal Resource Network of the Patient Advocate Foundation. The National Pro-Bono Director of the Network is Sheldon Weinhaus, Esquire, of St. Louis, Missouri, and a former member of the President's Advisory Commission on Consumer Protection. Patient Advocate Foundation is a national non-profit organization that serves as an active liaison between the patient and their insurer, employer, and/or creditors to resolve insurance, job discrimination, and/or debt crisis matters relative to their diagnosis through case managers and atttorneys. Patient Advocate Foundation seeks to safeguard patients through effective mediation assuring access to care, maintenance of employment, and preservation of their financial stability. PAF has recently been featured in the July 7, 2000 issue of ***The Wall Street Journal***, December 2000 issue of ***Reader's Digest***, and December 3, 2000 issue of ***Parade Magazine.***

As a member of our National Legal Resource Network, Mr. Carpey has accepted patient referrals from us and has provided initial consultation services to our patients without charge. Often, our cases are very time sensitive and demand immediate intervention. Mr. Carpey has responded to our call for patient support. There are very few ways that we can say thank you on behalf of the patients from your community who have been served by Mr. Carpey; however, we ask you to recognize him for services above and beyond the call of duty in easing the pain and suffering of patients who confront lack of access to the health care services that may help to extend or save their lives. Mr. Carpey helped us to serve over 29,000 Americans who called for our help last year. Without his initial consultation, we would not be able to serve all of the Americans who contact us and request legal services. Our staff case managers and staff attorneys alone cannot handle the volume of calls we receive from patients across the nation.

We wish to join your community in recognizing the outstanding contributions that Mr. Carpey is making to your community and to our nation as a whole. We urge you to consider paying tribute to your local hero in your newspaper so that Mr. Carpey can receive the recognition that he so readily deserves. We have included the address and contact numbers for Mr. Carpey below:

1201 Chestnut St., 10th Floor, Philadelphia, PA 19107
Phone: 215-563-8286

Thank you for your consideration of our request. I look forward to hearing from you soon.

Sincerely,

Nancy Davenport-Ennis
Founding Executive Director

Encl.

C: Stuart Carpey

Neilson Allows Insureds Maximum Recovery of First-Party Benefits

BY STUART A. CARPEY
Special to the Legal, PLW

Section 1717 of the Pennsylvania Motor Vehicle Financial Responsibility Law provides that an insured cannot stack the limits of coverage of multiple motor vehicles covered under the same policy of insurance or multiple motor vehicle policies covering the individual for the same loss.

The courts in the following cases had interpreted Section 1717 to preclude the of stacking first party benefits: *Laguna v. Erie Insurance Group*, 370 Pa. Super. 308, 536 A.2d 419 (1988); *Manolakis v. Transamerica Insurance Company*, 396 Pa. Super. 256, 578 A.2d 503 (1990); and *Serubo v. Home Insurance Company*, (E.D. Pa. 1995) U.S. Dist. LEXIS 10878.

However, a recent decision has made it much easier for Pennsylvania insureds to maximize the recovery of benefits from multiple insurance policies.

NEILSON

In *Neilson v. Nationwide Insurance Company,* 738 A.2d 490 (1999), a unanimous en banc panel of the Superior Court held that where a claim for first party benefits under 75 Pa. C.S.A. Section 1717 is made against one of several carriers of equal priority and that carrier exhausts the limits of its policy, a claim under another policy of equal priority

Maximum Recovery

continued from **S5**

and other similar auto insurance or self-insurance."

The Pennsylvania Superior Court disagreed with Nationwide's position, finding that the MVFRL did not allow stacking the limits of coverage but did allow combining policies to recover the total amount of the highest limit of any one policy. The language in Nationwide's policy certainly bolstered Neilson's argument.

The Superior Court's ruling upheld the decision of Judge William J. Lederer of the Philadelphia County Court of Common Pleas and overruled *Manolakis* and *Laguna*.

In rendering its decision, the Superior Court said that if the plaintiff was trying to recover a total of $30,000, such recovery would be prohibited by the MVFRL.

"This, of course, is not what Mr. Neilson sought to do in the instant case," Judge Stephen McEwen wrote. "Rather, he sought to obtain a total of $25,000 in income loss benefits — the precise amount of income loss benefits under the Nationwide policy which he purchased and paid for — by collecting $5,000 from Allstate and $20,000 from Nationwide. ... Such recovery is not 'stacking' and is not prohibited by Section 1717 of the MVFRL."

CONSEQUENCES

The consequences of *Neilson* need to be considered by the practitioner when handling any first party claim. For instance, consider the following circumstances.

A husband and wife each own their own vehicle and insure the vehicles under two separate insurance policies. They could, in theory, be insured by two separate insurance carriers, or by the same insurance carrier, so long as they were insured under separate policies.

The husband has $5,000 in first party medical coverage, and the wife has $50,000 in medical coverage. Both are injured in a motor vehicle accident. Both sustain in excess of $50,000 in medical bills, after reduction by the cost containment provisions of the MVFRL.

The consequences of Neilson *need to be considered by the practitioner when handling any first party claim.*

Pursuant to Neilson, these clients individually have $50,000 in available first-party medical coverage, even if the husband's carrier pays its $5,000 policy limit first. If the husband first submitted his medical claims to his own carrier who then exhausted husband's $5,000 in coverage, the wife's insurance carrier would be obligated to pay an additional $45,000 in benefits on behalf of husband.

Or to change the above scenario, the husband's policy provides for $10,000 in income-loss protection and $5,000 in medical benefits. The wife's policy provides for $50,000 in medical coverage but no income-loss protection. Both clients individually are entitled to $10,000 in income-loss protection and $50,000 in medical coverage.

The coverage afforded by Section 1717 since the Neilson decision is, of course, not limited to members of the same household.

For instance, isn't it also possible that someone who is insured under a commercial insurance policy with, for example, $100,000 in first party medical coverage and only $5,000 in first-party medical coverage on his or her individual policy, would be entitled to benefit from Neilson and be covered for $100,000 in medical coverage?

As long as each policy is at the same level of priority as defined by Section 1713, then the insured would be covered for $100,000 in first party medical benefits.

These are just a few examples. Any factual setting where an insured is covered under more than one policy must be evaluated in terms of combining the limits of first-party coverage in order to maximize recovery from all available first-party policies.

A key factor for the court in Neilson was that both policies at issue were at the same level of priority. One court has recently held that Neilson is not controlling where the second policy from which the insured is seeking benefits is not of equal priority as the insured's policy under which he is a named insured.

In *Klatt v. State Farm Insurance Company,* (Phila. C.C.P. 9804-0947), Judge Mathew D. Carrafiello ruled in favor of State Farm on a motion for summary judgment where the issue was whether a husband, who had not purchased income-loss protection on a policy under which he was a named insured, could recover benefits from his wife's policy, which had income loss protection.

Although the plaintiff was an insured as defined by the MVFRL on his wife's policy, he was not a named insured. Therefore, his policy and his wife's policy were of unequal priority.

Nonetheless, Judge Carrafiello recommended in his opinion that the issue be "revisited by the higher courts. A more expansive interpretation of the first party benefits and anti-stacking statutes is warranted enabling a person to recover supplemental first party benefits under a spouse's insurance coverage when injuries are sustained in a family vehicle."

In Neilson, the Superior Court clarified the meaning of Section 1717. This should represent more equitable results in the arena of first-party benefits. A close examination of the specific insurance policy provisions is also essential. Restrictive language regarding stacking of first-party benefits will not be allowed because of Neilson. Expansive language in the insurance policies should mean greater benefits to the insured, beyond which the policies, at first blush, might appear to allow.

STUART A. CARPEY
is a shareholder in the Philadelphia firm of Kreithen Baron & Carpey which focuses its practice on civil litigation.

which provides for a higher limit of first party benefits is permissible.

The insured party is covered up to the highest limit of the combination of both policies. The second carrier to whom the claim is submitted must pay the difference between the amount paid by the first carrier and the limits of the coverage on the second policy.

In *Neilson*, Robert Neilson was involved in a motor vehicle accident on May 10, 1992. At the time of the accident Robert Neilson was an occupant in a motor vehicle owned and operated by his son, William Neilson. William Neilson's vehicle was insured by Allstate Insurance Co.

As a result of that accident Robert Neilson sustained personal injuries, became disabled and incurred income loss as defined by Section 1712 of the MVFRL. Within two weeks of the accident Robert Neilson submitted his first party medical and income-loss claim to his son's carrier, Allstate.

Robert Neilson was the registered owner of two motor vehicles, one of which was insured under a policy with Allstate Insurance Co. which provided $5,000 in income-loss benefits. The other vehicle was insured under an insurance policy with Nationwide Insurance Co. which provided $25,000 in income-loss benefits. The Allstate and Nationwide policies were of equal priority as defined by Section 1713 of the MVFRL.

Neilson was informed by representatives of Allstate that his first party medical and income-loss claim had to be submitted and paid under his own policy with Allstate and not under his son's policy with Allstate. Robert Neilson then submitted his claim for first-party medical and income-loss benefits to Allstate under his own policy. Robert Neilson exhausted his $5,000 in income-loss benefits under his policy with Allstate. (Medical benefits were not at issue in the case).

The Superior Court found that while the MVFRL did not allow stacking the limits of coverage but did allow combining policies to recover the total amount of the highest limit of any one policy.

Subsequently, he applied for income-loss benefits from Nationwide. Nationwide paid Neilson $7,148.75 in income-loss benefits, then later informed Neilson that it would no longer be honoring his claim. The reason expressed for stopping benefits was based upon a decision of Nationwide's in-house legal department.

The claims adjuster who had commenced the income-loss payments was initially unaware of the ramifications of Section 1717. The income loss in the case exceeded $30,000 — the $5,000 in income-loss benefits through Neilson's coverage with Allstate and the $25,000 in income-loss benefits through his coverage with Nationwide.

Nationwide's position was that Section 1717 precluded it from having to pay Neilson the income-loss benefits under its policy despite rather broad language in the insurance policy.

The Nationwide policy provided the following: "In any occurrence where other similar auto insurance or self-insurance of equal priority to that provided in this coverage is available and the claim is first presented to us, we will process and pay the claim as if wholly responsible up to the limits of our policy.

"The total limits available from all such insurance will be considered not to exceed the highest limits available from any one source of coverage. In no instance may an insured or legal representative recover duplicate benefits from the same elements of loss under this

Maximum Recovery continues on **S6**