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INTERPRETATION AND APPLICATION OF THE “NO PAY, NO PLAY” RULE CONTINUES TO EVOLVE

by Shannon J. Gremillion

Since September 1998, Louisiana law has precluded recovery of the first \$10,000 in damages sustained by the owner of a motor vehicle involved in an accident who has failed to maintain compulsory liability security on his automobile. These statutory provisions are commonly referred to as the **no pay, no play** law. However, since its enactment, the law has continued to evolve through legislative amendments, as well as jurisprudential interpretation. These are the most recent interpretations and amendments.

OUT-OF-STATE RESIDENTS

The no pay, no play statute applies to residents of all states while driving vehicles registered in Louisiana, as well as to residents of all states that require compulsory motor vehicle insurance.

Prior to 2001, state law provided that “[e]very self-propelled motor vehicle registered in this state. . . shall be covered by an automobile liability policy. . . .”¹ **No pay, no play** provisions were not applied to residents of other states, unless, at the time of the accident, the out-of-state resident was “driving a car registered in Louisiana and [he or she] did not have the necessary insurance.”²

However, in 2001, Louisiana law was amended to cover vehicles registered in other states. Specifically, the new law requires insurance and proof thereof, not only for Louisiana but for all “other states or jurisdictions that require liability security.”³ Further, all violators of this new provision are expressly subject to the limitation of recovery provided for by the **no pay, no play** laws. Thus, residents of states, such as Mississippi (which has recently enacted a law which compels its citizens to maintain motor vehicle liability security),⁴ will be subject to the provisions of the **no pay, no play** law as long as the accident occurs after the effective date of the state’s compulsory motor vehicle insurance law.⁵

PARKED CARS

Legislative amendments exclude parked cars from the no pay, no play statute.

The legislature amended **no pay, no play** to exclude “any vehicle which is legally parked at the time of the accident.”⁶ The amendment took effect January 1, 2000. Accordingly, it is clear **no pay, no play** will not apply to any accident involving a parked car. However, it is important to note Louisiana courts are split with regard to accidents involving parked cars which occurred prior to the date of the amendment.

The Third Circuit held a vehicle must be in “operation” for **no pay, no play** to apply. Accordingly, the limitations of the law do not apply to a car that was hit while parked in a private lot.⁷ However, the Second Circuit concluded the Third Circuit’s ruling on this subject is wrong.⁸ The Second Circuit ruled **no pay, no play** should be applied to “individuals who broke the law by placing uninsured vehicles on the public streets and highways of this state where the vehicles could be involved in accidents.”⁹ Therefore, a vehicle temporarily parked on the shoulder of the interstate, after it developed mechanical problems during operation, would be subject to the provisions of **no pay, no play**.

EXCLUDED DRIVERS

The First and Third Circuits have split on the issue of whether or not no pay, no play applies to excluded drivers under an automobile owner’s compulsory liability policy. The Third Circuit says it does apply, and the First Circuit says it does not.

A split has recently developed between two Louisiana Courts of Appeal regarding the application of **no pay, no play** to drivers excluded under an automobile owner’s compulsory liability policy. At the heart of this split is a difference of opinion regarding the legislature’s reason for enacting the **no pay, no play** law.

According to the First Circuit, the “legislature’s public purpose . . . was to promote compliance with the state’s compulsory liability insurance law.”¹⁰ In *A. K. Durnin Chrysler-Plymouth, Inc. v. Jones*, the First Circuit considered a case where the operator of the vehicle was a husband whose wife had expressly excluded him from coverage under her policy. The court noted state law specifically allows one’s spouse to exclude another

from coverage.¹¹ Thus, the First Circuit concluded the *no pay, no play* statute does not apply because to apply it in this situation would “abrogate the clear and unambiguous language of [state law], as well as the specific legislative purpose.”¹²

The Third Circuit, however, took a different view in *Lantier v. State Farm*.¹³ In *Lantier*, the owner of the vehicle sought to recover property damage arising out of an accident which occurred while an excluded driver was operating the vehicle. The Third Circuit expressly disagreed with the First Circuit’s conclusion in *A. K. Durnin Chrysler-Plymouth*. The Third Circuit found the “legislative intent” of *no pay, no play* was “reducing the number of uninsured motorists on the highways.”¹⁴ Accordingly, the *no pay, no play* statute is effective to bar recovery for “what was in effect an uninsured vehicle.”¹⁵

The Third Circuit’s ruling in *Lantier* is of note not only because it is in conflict with the First Circuit’s ruling on this issue, but also because it clearly reverses the Third Circuit’s prior ruling. Just last year, the Third Circuit ruled in *Levy v. Vincent*,¹⁶ that *no pay, no play* does not apply to excluded drivers.¹⁷ The *Lantier* court chose not to address this flip-flop, and did not even cite its previous ruling in the opinion.

OWNER AS PASSENGER

The no pay, no play statute applies to bar recovery from a vehicle owner, even if the owner is a passenger in his vehicle at the time of the accident.

The Fourth Circuit recently decided a case in which a woman was a passenger in a vehicle owned and operated by her husband.¹⁸ The court found the *no pay, no play* statute operated to reduce the woman’s recovery notwithstanding the fact *no pay, no play* clearly excludes passengers.

The court concluded this spouse was a “vehicle owner” as that term is used in the *no pay, no play* statute because, by virtue of Louisiana’s community property laws, the wife had legal custody of the vehicle and owned an undivided one-half interest in the vehicle. Accordingly, both the husband and the wife had responsibility to obtain and maintain insurance.



¹¹La. R.S. 32:861(A)(1).
¹²*Atkinson v. Boyne*, 178 F.Supp.2d 670 (E.D. La., 2001).
¹³The Amendment 2001 La. Act No. 227 added La. R.S. 32:861(E).
¹⁴Miss. Code Ann Section 63-15-4(2)(a).
¹⁵*Martin v. Special Risk Insurance, Inc.*, 2001-2931 (La.App. 1 Cir. 6/7/02), 2002 WL 1265547.
¹⁶1999 Act No. 1085 added La. R.S. 32:866(H).
¹⁷*Rogers v. Commercial Union Insurance Company*, 2001-443 (La.App. 3 Cir. 10/3/01), 796 So.2d 862.
¹⁸*Dallas v. Hales*, 35,883 (La.App. 2 Cir. 5/8/02) 819 So.2d 367.
¹⁹*Id.* at 372.
¹⁰*A.K. Durnin Chrysler-Plymouth, Inc. v. Jones*, 2001-0810 (La.App. 1 Cir. 5/10/02), 818 So.2d 867, 872.
¹¹*Id.*; see also La. R.S. 32:900.
¹²*Id.*
¹³*Lantier v. State Farm Mutual Auto. Ins. Co.*, 2002-0301 (La.App. 3 Cir. 10/2/02) 2002 WL 31207178.
¹⁴*Id.* at 2.
¹⁵*Id.*
¹⁶796 So.2d 34 (La.App. 3 Cir. 7/18/01).
¹⁷Richard R. Montgomery authored the September 2001 issue of “From the Bench,” entitled “Recent Decisions Regarding Louisiana’s ‘No Pay No Play’ Statute. Therein, he discussed the *Levy v. Vincent* opinion at length.
¹⁸*Lewis v. Miller*, 2002-0667 (La.App. 4th Cir. 8/21/02) 2002 WL 1973938.



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