

# Auto Coverage Not Available To ATV Injuries

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November 6, 2018 | by Stanley Zator

On October 24, 2018, the Appellate Division delivered an unpublished opinion in the matter of *Starner v. Haemmerle, et. al.*, No. A-0153-17T2, 2018 WL 5273995 (App. Div. Oct. 23, 2018), foreclosing the application of automobile insurance coverage to all-terrain vehicles. The underlying facts of this case involved an ATV accident on May 23, 2015. Scott Haemmerle allowed Bailey Snyder, a minor, to drive his ATV with a number of passengers, including Hannah Starner. Ms. Snyder lost control of the ATV at which point it overturned causing injuries to Ms. Starner. The ATV was unregistered and uninsured. Ms. Starner filed a claim for her injuries against Ms. Snyder, among others. Ms. Snyder, in turn, filed a claim against her parents' automobile insurance policy with GEICO, alleging the policy provided coverage for Ms. Starner's injuries as they were sustained during the operation of a "four-wheel private passenger auto."

The issue on appeal was whether an ATV falls within the definition a "four-wheel private passenger auto" so as to trigger liability coverage under the applicable GEICO policy. Ms. Snyder argued she was entitled to coverage on the following grounds: (1) the ATV had four wheels and the capacity to transport passengers; (2) a registered ATV can be operated on public roadways; (3) the policy does not define private passenger auto; and (4) ambiguous policy terms should be interpreted in favor of the insured.

GEICO argued to the contrary relying upon the Title 39 motor vehicle statutes directed at ATVs and the Supreme Court's decision in *Wilno v. New Jersey Manufacturer's Ins. Co.*, 89 N.J. 252 (1982). Specifically, GEICO argued ATVs cannot be considered private passenger autos under their policy because N.J.S.A. 39:3C-1 and N.J.S.A. 39:3C-17(b) define ATVs as vehicles relegated for off-road use only; and, the *Wilno* decision previously prohibited dune buggy's from being considered private passenger autos for purposes of obtaining medical expense benefits (PIP) under an automobile insurance policy.

The appellate panel ultimately ruled in favor of GEICO, holding that it could not reconcile the nomenclature of an ATV with a private passenger auto. The court noted that one need not obtain a driver's license to operate an ATV; the various statutory provisions do not support that the legislature and/or policy drafters intended an ATV to be considered a private passenger auto; ATVs cannot be driven on public roads; and no reasonable policyholder would believe that GEICO's policy reference to "private passenger autos" would extend to an ATV. Lastly, the appellate panel noted that it was bound by the Court's decision in *Wilno* in the absence of a basis to distinguish an ATV from a dune buggy.