Texto original en espanol

1996 JTS 95, 141 D.P.R. 139, 1996 WL 499244 (P.R.), 1996 P.R.-Eng. 499,244, P.R. Offic. Trans.

José A. Quiñones López, Doris Z. Rivera Mathews, *pro se* and on behalf of the Conjugal Partnership constituted by them, Plaintiffs and appellees

v.

Pedro Manzano Pozas and his wife Jane Doe, the Conjugal Partnership constituted by them; Richard Doe and his wife Janet Doe, the Conjugal Partnership constituted by them; Nationwide Insurance Co., Defendants and appellant the latter

Supreme Court of Puerto Rico.
No. RE–91–567
San Juan, Puerto Rico, June 25, 1996

JUSTICE REBOLLO LÓPEZ delivered the opinion of the Court.

Review

Nationwide Mutual Insurance Company (Nationwide) seeks review of the June 24, 1991 judgment of the Superior Court of Puerto Rico, San Juan Part, which ordered it to pay, solidarily with the other codefendants, the total sum of $190,000 to plaintiffs-appellees, José A. Quiñones López *et al.,* for the damages resulting from an automobile accident.

The trial court also ordered Nationwide to pay codefendants Pedro Manzano Pozas and Ana María Sabbagh Thorne $6,000 in attorney's fees incurred as a result of Nationwide's refusal to provide coverage and legal representation.

I

On June 12, 1985, Nationwide issued automobile insurance policy No. 88–271–571 to Ana María Sabbagh, for a 1982 Mercury Cougar *registered in her name* in the Department of Transportation and Public Works. *This automobile belonged to Sabbagh Thorne and her husband's (Manzano Pozas) community property.*

Sabbagh married Manzano Pozas on March 11, 1977. They established residence at 191 O'Neill Street, Hato Rey, Puerto Rico. Around May or June, 1985, they separated, and Manzano Pozas moved

to a rented apartment in El Centro Condominium in Hato Rey.[1] Sabbagh stayed with her minor son on O'Neill Street. *Manzano Pozas kept some of his clothes in the O'Neill residence, where he also received his mail. He frequented the house to be with his son and to bathe the dogs.* On December 17, 1985, Manzano Pozas went to the family residence to use the Mercury Cougar for some personal errands.[2] *He had an extra set of keys to the car* but he could not get the car to start.[3] Manzano Pozas took a taxi, and *later borrowed a 1981 Toyota Celica from his friend Manuel Franco, Jr.* Close to midnight that day, Manzano Pozas left the Don Pepe restaurant, in the Condado area, where he had been in the company of some friends. While driving the Toyota east-west on F.D. Roosevelt Avenue he was involved in an automobile accident where coplaintiff Quiñones López was injured. Quiñones López had just left the opening of the Banco Nacional and was crossing toward El Zipperle *when he was run over by Manzano Pozas as he stood on the island that divides the traffic lanes on said avenue.* The Police subjected Manzano Pozas to a breath test. The result of this test showed that he had 0.17% of alcohol in the blood.[4]

As a result of the accident, Quiñones López lost consciousness. He was taken to the Río Piedras Medical Center where they

found that he had *a displaced comminuted subtrochanteric femoral fracture*[5] *in the underside of the left leg.* He was later taken to the San Carlos Hospital, and then to the Auxilio Mutuo Hospital where he underwent a subtrochanteric surgery, and had a metal plate placed and secured with nine screws. After surgery, Quiñones López was confined to *permanent home rest* for six months, during which time he received a total of 156 therapies. He was in a wheelchair for five months. On November 21, 1985, Quiñones López underwent a *second operation* in the Menonita Hospital in Aibonito, Puerto Rico. The screws were removed and a 13 mm. "Zickel Nail" was inserted through the head of the trochanter. A bone implant in the subtrochanteric area was *also* performed.

On December 8, 1986, Quiñones López, his wife, the conjugal partnership constituted by them, and their children filed an action for damages against Manzano

Pozas, his wife Sabbagh, the conjugal partnership constituted by them, and their insurance company. [6] On March 12, 1987, Manzano Pozas and Sabbagh answered the complaint, admitting the occurrence of the accident, denying the other allegations, and raising affirmative defenses.

On June 4, 1987, Sabbagh *formally* notified her insurer, Nationwide, of the accident *and applied for coverage under the terms of the policy she had purchased for the Mercury Cougar, since the coverage extended to any damage caused by her husband while driving a substitute vehicle while the covered vehicle was withdrawn from use for mechanical failure.* She *also* asked Nationwide to provide legal representation. After taking Manzano

Pozas's sworn statement on the details of the accident and other matters, Nationwide informed Sabbagh (by letter of August 19, 1987) that there was *no* policy coverage *because she and her husband were separated at the time of the accident and the policy solely covered those persons living in the household of the named insured.* Nationwide refused to offer the legal representation requested. Manzano Pozas and Sabbagh were thus forced to assume the costs of their legal representation in this case.
On July 28, 1987, plaintiffs *amended* the complaint under Civil Procedure Rule 15.4 (32 L.P.R.A.App. III) to include the name of Nationwide, who had originally appeared under a fictitious name. Nationwide was duly summoned on August 20, 1987, and on September 28, 1987, answered the complaint *denying* liability. Manzano Pozas and Sabbagh filed a *third-party complaint* on November 17, 1987, against Nationwide who answered the same on December 1, 1987, *denying* liability. [7]

Finally, on June 24, 1991, the San Juan Superior Court rendered *judgment finding for* plaintiffs and ordering defendants to *solidarily* pay plaintiffs $190,000. [8] The trial court *also* found for defendants in the third-party complaint and ordered Nationwide to pay Manzano Pozas and Sabbagh $6,000 for the costs incurred in their defense. [9]

Nationwide sought review before this Court. It assigns the following errors to the trial court:

1. THE TRIAL COURT ERRED IN CONCLUDING THAT THE NATIONWIDE MUTUAL INSURANCE COMPANY POLICY COVERED THE VEHICLE INVOLVED IN THE ACCIDENT AND THAT NATIONWIDE COULD NOT REFUSE COVERAGE OR LEGAL REPRESENTATION.

2. THE TRIAL COURT ERRED IN FINDING CODEFENDANT ANA MARIA SABBAGH THORNE SOLIDARILY LIABLE FOR THE ACCIDENT.

3. THE TRIAL COURT ERRED IN ORDERING NATIONWIDE MUTUAL INSURANCE COMPANY TO PAY DAMAGES IN EXCESS OF POLICY LIMITS.

4. THE TRIAL COURT ERRED IN NOT APPLYING THE COMPARATIVE NEGLIGENCE DOCTRINE AND MAKING AN EXCESSIVE DAMAGES ASSESSMENT.
We will adjudicate.

II

With regard to the first and second errors assigned, Nationwide argues that the trial court erred in concluding that Sabbagh's policy covered the vehicle involved in the accident caused by her husband, who was at the time driving a car belonging to a third person. Nationwide's *main contention* rests on the fact that the policy *stipulates* that it covers the spouse *only* if he lives "under the same roof" of the named insured. [10]

Through the insurance contract—entitled "Nationwide Century II Automobile Policy" [11] —signed by Sabbagh and Nationwide, Nationwide agreed to furnish the coverage selected by Sabbagh in exchange for specified advanced premium payments under the terms and conditions of the policy. [12] The policy chosen by Sabbagh included,

among other things, *civil liability coverage for property damage to third persons and bodily injury.* On this point the contract provides:

CIVIL LIABILITY COVERAGE FOR PROPERTY DAMAGE TO THIRD PERSONS AND BODILY

> **INJURY**. If under this coverage **you** become legally obligated to pay for damages resulting from the possession, maintenance, use, loading or unloading of your automobile, **we** will pay for such damages. *Any person residing in your household shall be covered.* Also covered is any person or organization *legally responsible* for the use of your automobile and who uses it with your permission. Permission may be implied or express....

(Underscore supplied.)

> The following terms are defined under "Definitions":
>
> (a) "YOU" and "YOUR" mean or refer to the named insurer of the attached Declarations, **and include the spouse of said insured if residing under the same roof**.

(Underscore supplied.)

> (b) "WE," "OUR," and "THE COMPANY" mean or refer to Nationwide Mutual Insurance Co.
>
> (c) "THE INSURED," "AN INSURED," and "ANY INSURED" mean or refer to persons and organizations specifically indicated as entitled to protection under the coverage under description.

The policy in question has a provision *to extend* the civil liability coverage to the use of *other* motor vehicles not owned by the named insured. The clause entitled "Coverage Extension" provides:

> **USE OF OTHER MOTOR VEHICLES.** The Coverage for Damages to Property of Third Persons and Bodily Injury of your automobile insurance *also covers certain other vehicles:*
>
> 1. **It *applies to a motor vehicle not owned by you while it temporarily substitutes your automobile.* Your automobile must be withdrawn from use due to mechanical failures, repairs, maintenance, loss or destruction.**
>
> 2....
>
> 3. ***It applies to a motor vehicle owned by any person not a member of your household. The protection applies only while said automobile is being used by you or by any relative residing in your household.*** This protection applies only to policies issued to individuals (not organizations). It protects the user and any other person or organization not owner of the vehicle but who is responsible for its use. Protection does not extend to losses:
>
> a) involving the use of the vehicle for your occupation or business or those of relatives who reside in your household, except for a private carrier operated by you, your chauffeur, or domestic employee.
>
> b) that occur while the vehicle is being furnished to you or to a member of your household for regular use.

(Underscore supplied.)

Under these clauses, *Manzano Pozas* would be entitled to the extended coverage in the policy only if *he meets at least three requirements:* a) he is the spouse of the named insured; b) he resides under the same roof with the named insured; and c) he used a motor vehicle not owned by him or by the named insured while the covered automobile was withdrawn from use due to mechanical failures, repairs, maintenance, loss or destruction.

We have no doubts about the fact that Manzano Pozas meets the first and third requirements. That is, when the accident occurred, Manzano Pozas and Sabbagh were married to each other and the vehicle he was driving belonged to a third person. Manzano Pozas was using said vehicle in substitution of the covered automobile since the latter was withdrawn from use because of mechanical failure. This was the trial court's unequivocal conclusion based on evidence warranting its full credit. It has been clearly established by this Court that we shall *not* disturb on appeal the findings of fact and credibility adjudication of the trier of facts at first instance, absent manifest error, passion, bias or partiality. *Vélez v. Srio. de Justicia,* 115 D.P.R. 533 (1984); *Ortiz v. Cruz Pabón,* 103 D.P.R. 939 (1975); *Rodríguez v. Concreto Mixto, Inc.,* 98 P.R.R. 568 (1970); *Pueblo v. Pintos Lugo,* 131 D.P.R. (1992); *Pueblo v. Rodríguez Román,* 128 D.P.R. (1991). [13]

Now then, at the time of the accident, Manzano Pozas and Sabbagh were separated and living in separate dwellings. The *issue* then is whether Manzano Pozas meets the *second* requirement. *Consequently, the main issue at play here is the definition of the scope of the phrase "under the same roof" or "residing in your household," as these are used in the policy, in order to determine if they necessarily imply physical cohabitation in the same residence, structure or building at the time of the accident.*

The scope of this language, frequently employed in the insurance field, *has not been previously defined in our jurisdiction. We shall do so now.*

III

In general, civil (tort) liability insurance "seek[s] primarily to 'protect the insured against civil (tort) liability incurred with regard to third persons for acts for which he is [legally] liable.' J. Castelo Matran, *Diccionario Mapfre de Seguros* 264, Madrid, Ed. Mapfre (1988). The insurer agrees, within the contractual terms, to assume the obligation to pay a third person for the damage caused by the insured. However, in practice, there is no such thing as an insurance to cover all the liability that a person may incur. Actually, the only coverage available is a civil (tort) liability coverage for certain activities of the insured that may cause damage. Among the most popular are, for example, automobile liability insurance (covering damages resulting from injury caused to third persons by use of motor vehicles), and professional malpractice coverage for damages resulting from the practice of a given profession: medicine, law, architecture, etc."

etc." *Meléndez Piñero v. Levitt & Sons of P.R.,* 129 D.P.R. (1991).

An insurance contract, like any other contract, constitutes the *law between the parties* provided that the three essential conditions for its validity concur*: *consent* of the contracting parties, a *definite object* that may be the subject matter of the contract, and the *consideration* for the obligation that may be established. Civil Code sec. 1213 (31 L.P.R.A. § 3391). Both the insurer and the insured are bound to fulfill the policy terms and conditions. *Torres v. E.L.A.,* 130 D.P.R. (1992). [14]

The Insurance Code of Puerto Rico provides that every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement or application attached to and made part of the policy. Section 11.250 (26 L.P.R.A. § 1125). *Meléndez Piñero v. Levitt & Sons of P.R.,* 129 D.P.R.1991. [15]

We should not lose sight of the fact, however, that when in doubt about the interpretation of a policy, it should be resolved taking into consideration the purpose of the policy: to provide protection to the insured. [16] That is why nice constructions that would allow insurers to dodge liability are not favored. It is incumbent upon the courts to find the sense and meaning that a person of average intelligence would give to the language of a policy. *PFZ Props. Inc. v. Gen. Acc. Ins. Co.,* 136 D.P.R. (1994); *Barreras v. Santana,* 87 P.R.R. 215 (1963). Emphasis should not be laid on grammatical rigour, but rather on the general,

popular use of words, so insurance contracts may be understood and construed according to the most common and usual meaning. *Marín v. American Int'l Ins. Co. of P.R.,* 137 D.P.R. (1994); *Pagán Caraballo v. Silva, Ortiz,* 122 D.P.R. 105 (1988).

As a rule, insurance contracts, by virtue of being considered adhesion contracts, [17] are liberally construed in favor of the insured. *Rosario v. Atl. Southern Ins. Co. of P.R.,* 95 P.R.R. 742 (1968); *Barreras v. Santana,* 87 P.R.R. 215 (1963); *Aparicio v. Teachers' Association,* 73 P.R.R. 549 (1952). This rule, however, does *not* compel constructions in favor of the insured when a clause favors the insurer, and its meaning and scope is clear and unambiguous. *Torres v. E.L.A,* 130 D.P.R.1992; *González v. Coop. de Seguros de Vida de P.R.,* 117 D.P.R. 659 (1986); *Casanova v. P.R. Amer. Ins. Co.,* 106 D.P.R. 689 (1978); *Rivera v. Insurance Co. of P.R.,* 103 D.P.R. 91 (1974). In such cases, it should be held as binding on the insured. *Casanova v. P.R. Amer. Ins. Co.,* 106 D.P.R. 689 (1978). Likewise, exclusion clauses—not usually favored—in an insurance contract should be strictly construed against the insurer. *Rivera v. Insurance Co. of P.R.,* 103 D.P.R. 91 (1974).

In sum, when the contractual terms, conditions, and exclusions—the law between the parties—are clear, specific, and do not lend themselves to ambiguities or different constructions, they should be enforced according to the will of the parties. Absent ambiguity, contractual clauses are binding on the parties. *García Curbelo v. A.F.F.,* 127 D.P.R. (1991).

IV

Nationwide argues that the phrase "under the same roof," as used in the policy, "clearly means in the same residence." It adds that "[t]he use of the word 'spouse' clearly means that it refers to the husband or the wife, as

the case may be, and the fact that they are legally married has no effect whatsoever if they do not live under the same roof, that is to say, together in the same residence"; therefore, Nationwide alleges that its policy in this case does not cover the accident here in controversy because *at the time* of the accident Manzano Pozas did *not* live with the insured Sabbagh under the same roof, even though he was her spouse.

Nationwide's argument *at first blush* is a strong and impressive one; this is a strictly literal construction, solely based on the grammatical exactness of the terms or words used in the policy that seems to inexorably lead us to this conclusion. *Nonetheless,* a careful analysis of the situation convinces us that we *cannot* strictly construe the cited terms and language. We can think of several instances in which said literal construction would lead us not only to an erred result, but to the commission of an injustice. By way of example, let us say that at the time of the accident one of the spouses was not living "under the same roof," but, on the contrary, was "residing" outside the home and even outside Puerto Rico, by reason, let us say, of illness, studies, or military service. It would be absurd and unfair, I repeat, that we literally apply the language at issue to any of the mentioned situations and, thus, allow denial of coverage.

So, once we—*by necessity*—do away with the literal application or construction of the language or words of the policy at issue here, we realize that even in situations like the one under our consideration—temporary separation of the spouses—we *cannot* apply said terms too literally, because in so doing we would *also* reach incorrect and unfair results.

As we said in *Meléndez Piñero,* "[t]he insurance policies marketed in Puerto Rico are, ordinarily, the 'standard policies' of the different types of insurance coverage sold in the United States by insurance companies. *This makes federal and state caselaw useful and persuasive in our jurisdiction.*" [18] (Underscore supplied.)

United States courts, *as a matter of public policy,* tend to *extend maximum coverage* to insurance contracts especially during the existence of the marital bond in situations like the one at bar. *State Auto Property & Cas. v. Gibbs,* 444 S.E.2d 504 (S.C.1994); *Reserve Ins. Co. v. Apps.,* 85 Cal.App.3d 228 (1978); *Hobbs v. Fireman's Fund Ame. Ins. Companies,* 339 So.2d 28 (1976); *Hawaiian Ins. & G. Co., Ltd. v. Federated Amer. Ins. Co.,* 534 P.2d 48 (1975); *Hartford Insurance Group v. Winkler,* 508 P.2d 8 (1973); *Aetna Casualty and Surety Company v. Miller,* 276 Fed. Supp. 341 (1967); *Zurich Ins. Co. v. Monarch Ins. Co.,* 247 Md. 3 (1966); *Lumbermen's Mut. Cas. Co. v. Continental Cas. Co.,* 387 P.2d 104 (1963). [19]

Nevertheless, a general rule of automatic application has not been formulated to solve such situations; *in other words, the*

"general rule" is precisely to the effects that these controversies shall be decided in light of the particular and specific facts of each case. That is, the facts of each particular case must be examined in order to determine when the named insured or his/her spouse is, or stops being, a resident under the same roof for purposes of this type of insurance policy.

The *guiding principle* governing the determination of extending a policy coverage like the one at bar, in keeping with the caselaw trend in the United States, *is the spouse's intent upon leaving the family residence.* That is, if the intent of said spouse is a definite separation that would appear permanent, coverage is denied, but if, on the contrary, it involves a temporary separation with the intent of eventually returning to the conjugal household, then coverage may be extended.

In determining whether or not to extend coverage, the following factors or tests prove very useful: (a) if when the accident occurred the relationship between the spouses was cordial or hostile; (b) if there is a possibility of reconciliation between the spouses to cause a return to the marriage's habitual residence; (c) if the physically absent spouse contributes economically to support the conjugal household or depends on the other spouse for support; (d) and the time they spend together in married-couple-type activities.

None of these tests alone is sufficient to conclude that the spouse—who at the time of the accident lived apart—continues to live "under the same roof" as the named insured. Neither do all the cited tests need to concur in one factual context. *It is the combination of all of them, or some, that would lead the trier to that determination.* On the other hand, it must be made clear that the mere legal existence of a marriage bond alone will not automatically extend a policy coverage in a situation as the one at hand.

Let us examine the situation here in light of these tests. [20] Sabbagh and Manzano Pozas, who were married to each other, separated after they had some marital problems. Nonetheless, *and as determined by the trial court,* both were exploring a possible reconciliation and their relationship was cordial. [21] Manzano Pozas kept some of his clothes at the 191 O'Neill Street residence—where he had lived with Sabbagh and where she continues living alongside their son—and received most of his mail at said address. [22] Moreover, Manzano Pozas regularly went to said residence to be with his son and to bathe the dogs. [23]

From all the circumstances in this case, it may be reasonably inferred that Manzano Pozas's intent on leaving the conjugal residence was not to create a definite separation likely to be permanent, but a temporary separation seeking to eventually return home once the couple's troubles were overcome and the differences between them settled. On the other hand, the automobile "substituted" by Manzano Pozas—a 1982 Mercury Cougar—although registered in the name of Sabbagh, who appeared as the "named insured" in Nationwide's policy—was part of the community property.

That being the case and there also being a possible reconciliation between the spouses, plus the presence of several of the factors mentioned above, we must conclude that Manzano Pozas "lived under the same roof" or "in the same household" as Sabbagh, as these terms are used in Nationwide's policy. Consequently, *we hold* that the coverage at issue should be extended to protect both defendants if one or both are found legally responsible for the damages caused to plaintiffs.

V

The conclusion we have reached does *not* entirely settle this controversy. We must still determine if Nationwide's policy covered the vehicle involved in the accident. Said determination depends on how the substitution of the covered vehicle described in the policy took place.

As we stated above, the policy at issue contains a provision extending coverage to the use of a motor vehicle not covered by the policy. [24] The policy, however, is silent as to how the covered automobile may be substituted. Nationwide argues that the *only* person authorized to substitute the vehicle is the named insured, *or some relative living under the same roof who had been using the covered vehicle and which vehicle broke down during its use.* Nationwide argues that since Manzano Pozas "was *not* the named insured and was *not* a spouse or relative living under the same roof ... he had no authority or right of any kind to substitute the covered vehicle with another owned by a third person." [25]

As to who has authority to substitute the covered vehicle under this type of clause, see Philip Gordis, *Property and Casualty Insurance* 484 (1984), to wit:

> "**Drive Other Cars -** The policy will cover the Insured, his spouse and resident relatives while driving **any other automobile.** Similarly, the policy will cover such other persons or organization legally responsible for the Insured's using of any automobile, except one which is owned or hired by the person or organization.
>
> **....**
>
> **Drive Other Car Exclusions—** As respects the use of other automobiles, the intent of the policy is to cover only such automobiles as are not furnished or available for regular use. The policy specifically excludes any other automobile owned by the Insured or a member of his household, as it is contemplated that such automobiles will be insured at the appropriate premium for the coverage. Also excluded is any automobile other than a temporary substitute automobile **...** owned by or furnished for regular use to the insured or a member of his household other than a domestic servant.
>
> ....
>
> **3. Temporary Substitute Automobile—** If the automobile described in the policy is withdrawn from service while it is being repaired or serviced, or during a period when it has been lost or wrecked, the policy covers the use of any other automobile which is being used temporarily as a substitute for the withdrawn vehicle provided the Insured does not own the automobile. No notice of the substitution is required and no additional premium is charged." (Underscore in the original.)

In the present case, it is imperative to conclude that Manzano Pozas had the authority necessary to substitute

the covered vehicle. This is so because at the time of the accident Manzano Pozas, as *we have held,* "lived in the household" of the named insured—his wife—*and as Nationwide admits, the only ones who can make the substitution is the named insured, or some relative "living under the same roof."* Consequently, Nationwide's policy effectively covered the substitute vehicle in the accident involving Manzano Pozas. The trial court did *not* err.

VI

In its first assignment of error, Nationwide charges the trial court with having erred in "[concluding ... that Nationwide could not refuse ... legal representation." We have ruled that Nationwide's policy covered the automobile involved in the accident. This suffices to dispose of this assignment.

In any event, said assignment is not discussed by Nationwide in its petition for review or in its brief. This Court has clearly established that the mere assignment of an error that is not subsequently grounded or discussed shall not be a reason for reviewing, modifying, or in any way changing a decision of a lower court. *J.R.T. v. Hato Rey Psychiatric Hosp.,* 119 D.P.R. 62 (1987); *Santos Green v. Cruz,* 100 P.R.R. 9 (1971); *People v. Matos Pretto,* 93 P.R.R. 111 (1966); *People v. Febres,* 78 P.R.R. 850 (1956); *De Jesús v. Assad,* 63 P.R.R. 131 (1944); *Heirs of González v. Federal Land Bank,* 51 P.R.R. 454 (1937); *Morales v. Cruz,* 34 P.R.R. 796 (1926) [26]; *People v. Cruz,* 34 P.R.R. 206 (1925).

Accordingly, as ruled by the trial court, Nationwide must pay Sabbagh the attorney's fees incurred in her defense as a result of

Nationwide's failure to provide her with legal representation. [27] *PFZ Props. Inc. v. Gen. Acc. Ins. Co.,* 136 D.P.R.1994; *Pagán Caraballo v. Silva, Ortiz,* 122 D.P.R. 105 (1988); *Vega v. Pepsi–Cola Bot. Co.,* 118 D.P.R. 661 (1987); *Mun. of San Juan v. Great Ame. Ins. Co.,* 117 D.P.R. 632 (1986). [28]

VII

Nationwide affirms, with regard to the liability ruling, that Sabbagh is not legally responsible for the damage caused by her husband Manzano Pozas while he was driving a motor vehicle owned by a third person in substitution for the covered automobile. Nationwide argues that Manzano Pozas "[w]as not on any marital errand" and "[n]o gain was going to come to the already affected conjugal partnership constituted by him and his separated wife." With regard to this specific point, *Nationwide is right.*

The conjugal partnership is an entity entirely distinct from the spouses constituting it. *Universal Funding Corp. v. Registrador,* 133 D.P.R. (1993); *Ríos Román v. Registrador,* 130 D.P.R. (1992); *Núñez Borges v. Pauneto,* 130 D.P.R. (1992); *Cruz Viera v. Registrador,* 118 D.P.R. 911 (1987); *Int'l Charter Mortgage Corp. v. Registrador,* 110 D.P.R. 862 (1981); *Rovira Tomás v. Sec. of the Treasury,* 88 P.R.R. 168 (1963); *Rivera v. Casiano,* 68 P.R.R. 177 (1948); *Ex Parte García,* 54 P.R.R. 478 (1939). Civil Code sec. 1310 (31 L.P.R.A. § 3663) provides the following with regard to the fines and pecuniary penalties imposed on one of the spouses prior to or during the marriage, as in the present case:

> The payment of debts contracted by the husband or by the wife, before marriage, shall not be borne by the partnership.
>
> **Neither shall it bear the payment of fines or of pecuniary condemnations which may be imposed on either of them.**
>
> However, the payment of debts contracted by the husband or by the wife, prior to the marriage, and that of fines and condemnations imposed on either of them, may be claimed against the partnership property, after covering the expenses, mentioned in section 3661 of this title, if the debtor spouse should have no private capital, or were it insufficient; but at the time of the liquidation of the partnership the payments, made for the specified causes, shall be charged to said spouse.

(Underscore supplied.)

As a rule, payment of fines or pecuniary penalties imposed on one of the spouses shall not be charged to the conjugal partnership. *Cruz Viera v. Registrador,* 118 D.P.R. 911 (1987). This is so because fines—economic sanctions imposed for the commission of public offenses—are personal in nature and should be paid by the convicted or fined spouse and not by the conjugal partnership, except when both spouses act in common design in the perpetration of an offense. *Lugo Montalvo v. González Mañón,* 104 D.P.R. 372 (1975). However, *in*

civil extracontractual liability (tort) cases, liability shall be borne personally by the spouse or by the conjugal partnership, *according to the facts giving rise to the same.* See: *Orta v. Padilla Ayala,* 131 D.P.R. (1992); *Asociación de Propietarios v. Santa Bárbara Co.,* 112 D.P.R. 33 (1982); *Lugo Montalvo v. González Mañón,* 104 D.P.R. 372 (1975).

The conjugal partnership could be held liable for the individual actions of one spouse when the particular facts of the case show that said spouse's activity resulted in an *economic gain* for the partnership. *Orta v. Padilla Ayala,* 131 D.P.R. (1992); *Cruz Viera v. Registrador,* 118 D.P.R. 911 (1987); *Lugo Montalvo v. González Mañón,* 104 D.P.R. 372 (1975); *Sepúlveda v. Maldonado Febo,* 108 D.P.R. 530 (1979); *García v. Montero Saldaña,* 107 D.P.R. 319 (1978). That is why in *Lugo Montalvo* we found the conjugal partnership of the defendant physician and his wife liable upon concluding that his professional economic endeavors added to the bulk of the community property and, hence, the conjugal partnership should also be held liable. In *Albaladejo v. Vilella Suau,* 106 D.P.R. 331 (1977), this Court held that the conjugal partnership to which the defendant spouse belonged was liable for the damage resulting from an automobile accident when the said spouse was driving the vehicle on a job-related errand, since a spouse's employment is part of the assets of the conjugal partnership and it is thus liable for the damage caused.

Subsequently, in *Asociación de Propietarios* we reversed a trial court ruling that dismissed a damages suit against the conjugal partnership of an engineer, member of a partnership made up of engineers and architects. In said case we held that the conjugal partnership of a member of a partnership was solidarily liable for said member's **negligent acts** since the real recipients of the partnership's revenues were its members.

Recently, in *Orta* we found the conjugal partnership of a mayor not liable for the intentional damage caused by the mayor while on duty. [29] In *Orta* we ruled that the conjugal partnership of a public officer was not solidarily liable for the **intentional damage** caused by the latter while on duty merely because the conjugal partnership reaped financial gain from said officer's income.

As an *exception* to the rule that the conjugal partnership is not liable for the damage caused by one of its members in actions where it reaps no gain, in the event the defendant spouse does *not* have enough assets to provide indeminification or assets are insufficient, *suit can be brought* against the assets of the conjugal partnership. This is possible only when it is alleged and established that the conjugal partnership has sufficient assets to pay the Civil Code sec. 1308 debts and obligations (31 L.P.R.A. § 3661) in the first place. [30] *Cruz Viera v. Registrador,* 118 D.P.R. 911 (1987); *Flores v. Silva,* 60 P.R.R. 363 (1942). Once the section 1308 obligations are satisfied, the assets of the conjugal partnership may be charged if it has sufficient funds to answer for the husband's or wife's debts without putting the partnership's solvency at risk, provided that steps are taken so that when the conjugal partnership is liquidated—the innocent spouse is acknowledged the corresponding credit. *Cruz Viera v. Registrador,* 118 D.P.R. 911 (1987). In these cases, the conjugal partnership's liability is subsidiary, coming into play only after the private assets of the legally responsible spouse are exhausted. *Núñez Borges v. Pauneto,* 130 D.P.R. (1992).

Manzano Pozas's activities at the time of the accident did *not* represent a financial gain or benefit for his and Sabbagh's community property. Manzano Pozas was not driving the vehicle in activities related to his employment; the vehicle used by Manzano Pozas was not part of the community property; and Sabbagh was not involved in the accident. Consequently, we must conclude that Sabbagh is not legally responsible for the damage caused by Manzano Pozas while driving, under the influence of alcohol, a motor vehicle belonging to a third person, while *in activities not related to his employment and that did not represent a financial gain to the marital assets.* Neither can the conjugal partnership constituted by codefendants be held liable. [31]

Now then, the fact that the named insured, Sabbagh, is not legally responsible for the damage caused by her husband Manzano Pozas does not exempt Nationwide from its responsibility to pay the indemnity decreed. Let us see.

According to the policy definitions, the words "you" and "your" "... mean or refer to the named insured of the attached Declarations, **and include the spouse of said insured residing under the same roof**." (Underscore supplied.) The civil (tort) liability coverage for damages to property of third persons and bodily injury states that under said coverage "if ... you [—the named insured

or his/her spouse if residing under the same roof, that is, Sabbagh or her husband Manzano Pozas—] become legally obligated to pay for damages resulting from the possession, maintenance, use, loading or

unloading of your automobile, *we [—Nationwide Mutual Insurance Company—]* will pay for such damages." The policy further states that "[a]ny person residing in your hous

ehold shall be covered." (Underscore supplied.)
The Third–Person Property Damage and Bodily Injury coverages of Nationwide's automobile insurance policy apply, in addition to the covered vehicle, to a motor vehicle not owned by the named insured while it temporarily substitutes the said insured's automobile if the latter is withdrawn from use because of mechanical failure, repairs, maintenance, loss or destruction. Protection also extends to a motor vehicle belonging to any person not a member of the named insured's household. This protection "applies only while said automobile is being used **by you or by any relative residing in your household**," that is, by the named insured (Sabbagh), her spouse (Manzano Pozas) if residing under the same roof, and includes any other relative residing in the household of the named insured (Sabbagh). *This moves us to conclude that Manzano Pozas is an additional insured within the terms of the policy, and as such, warrants policy protection, regardless of his wife's legal responsibility as the named insured.*

Consequently, *even though* the trial court erred in ruling that Sabbagh was solidarily liable for the damages caused by her husband in said accident, *the court was correct in concluding that Nationwide's policy covered the vehicle involved in the accident.*

VIII

Nationwide affirms that the trial court erred in ordering it to pay excess damages.

According to the Declarations attached to Nationwide's policy, the civil liability limits for bodily injuries were $100,000 per person, up to a $300,000 top per occurrence. Said coverage did not extend to damages for mental anguish and suffering. Nationwide argues that if found liable, its liability would be up to the amount specified in the Declarations, that is, up to $100,000 in the present case.

The policy in question provides, insofar as it is pertinent, that:

> **AMOUNTS PAYABLE FOR CIVIL LIABILITY LOSSES.** Our obligation to pay for damage to property or bodily injury is limited to the amounts specified per person and per occurrence in the Declarations attached to the policy. The following conditions apply:
>
> 1. For civil liability for damage to property, the specified limit is the limit for all legal damages in one occurrence.
>
> 2. For civil liability for bodily injury, the specified limit per person is the limit for all legal damages claimed by anyone for bodily injury or loss of services of a person as a result of one occurrence. The total limit of our per-occurrence liability is the limit for all damage suffered by two or more persons.
>
> 3.....
>
> 4. In any loss covered under "USE OF OTHER MOTOR VEHICLES," the limit of liability shall be the highest limit applicable to any vehicle specified in this policy.
>
> 5.....
>
> **OTHER INSURANCE**....

(Underscore in the original.)

The insurance company that issues a policy insuring any person against damage claims by reason of legal responsibility for bodily injury, death, or damage to property of third persons, shall be strictly liable for a loss covered by said policy, and payment of said loss by the insurer to the extent of its liability shall be made according to the terms of the policy, regardless of payment by the insurer of any final judgment rendered against it by reason of the occurrence. Insurance Code sec. 20.010 (26 L.P.R.A. § 2001).

Ordinarily, the insurer is only liable to the extent of the liability limits stipulated by the policy for covered losses.[32] As an exception, whenever the insurer clearly acted in bad faith, putting its interests above those of the

insured, it is reasonable to require the insurer to pay any amount in excess of the policy stipulation. This is based on the implied covenant arising from insurance contracts that require the insurer to give special consideration to the insured's interests. *Morales v. Automatic Vending Service, Inc.,* 103 D.P.R. 281 (1975). [33]

Accordingly, in *Morales* we held the insurer liable in excess of the policy limits, upon concluding, as did the trial court, that the insurer acted in bad faith, and in a capricious and negligent manner by not accepting a settlement within policy limits tendered by plaintiffs in a clear case of insurer liability. Hence, the insurer in said case placed its own interests above those of the insured, in breach of its fiduciary relationship that compelled it to act in good faith, and with much discretion and diligence when considering a reasonable settlement offer.

In the present case, the trial court made *no* finding as to the insurer's actions on this point, only saying that the insurer could not deny coverage or legal representation. We do *not* have sufficient information to conclude that the insurer here acted in bad faith and in a capricious manner by refusing coverage and legal representation to Sabbagh and Manzano Pozas. Refusing to give coverage and/or legal representation does not, in itself, constitute bad faith; only when seen in light of the totality of circumstances that surround such refusal, can an indication of the insurer's bad faith be perceived. [34]

Consequently, the trial court erred in ordering Nationwide to pay damages for bodily injury in excess of the policy liability limits, absent a bad faith determination justifying the imposition of such liability. Likewise, the trial court erred in ordering Nationwide to pay damages for mental anguish and sufferings when Sabbagh and her spouse Manzano Pozas do not have said coverage under the terms and conditions of the policy.

IX

Finally, Nationwide contends that the trial court erred in not applying the comparative negligence doctrine and in allegedly assessing excess damages. This assignment is based on *Molina, Caro v. Dávila,* 121 D.P.R. 362 (1988). [35] Nationwide alleges that coplaintiff Quiñones López was negligent in trying to cross the avenue without taking precautions in an area with no official pedestrian crossing, and that, compared with the indemnity awarded in *Molina* for bodily injury, the trial court's indemnity award here is excessive.

The rule is that the person who by tortious or negligent act or omission causes harm to another must repair the damage done. It is also a well-known rule that concurrent carelessness of the injured party does not exempt from liability but implies an indemnity reduction. Civil Code sec. 1802 (31 L.P.R.A. § 5141). This is what is known as the comparative negligence doctrine, adopted here by Act No. 28 of June 9, 1956, and added as the last paragraph to sec. 1802. Herminio M. Brau del Toro, *Los daños y perjuicios extracontractuales en Puerto Rico,* San Juan, Pubs. J.T.S. (2d ed.1986).

Brau del Toro has stated the following with regard to this doctrine:

> According to this doctrine, prevalent in Puerto Rico now, the concurrent or contributory negligence of plaintiff (and the risk he/she assumes) serves as basis for mitigating, attenuating or reducing the defendant's pecuniary liability, but fails to entirely exempt him/her from liability.
>
> It is said that this rule tends to individualize compensation for damages, placing the economic burden on
>
> the parties in proportion to their carelessness or negligence. Aside from determining the amount of compensation the victim should receive, the trier must in all cases determine the fraction (or percentage) of liability or negligence chargeable to each party, and reduce the plaintiff's indemnity according to this distribution of negligence.
>
> ....
>
> Hence, in order to determine the negligence to be attributed to each party in cases of comparative negligence, one must analyze and consider all the facts and circumstances present in the case, and specifically if there was a predominant cause.

The trial court described the events in its findings of fact:

> 5. When coplaintiff [Quiñones López] left the activity in the company of some friends, they decided to stop for a bite at the El Zipperle Restaurant.

6. Since coplaintiff Quiñones Lopez did not have a car, Luis Alberto Rivera Siaca offered to take him.

7. Rivera Siaca had his car parked on the south side of Roosevelt Avenue, which has three lanes east-west bound and three lanes bound in the opposite direction, divided by a traffic island.

8. Coplaintiff Quiñones López and his friend crossed the east-bound lanes and reached the traffic island.

9. It was raining that day and the pavement was wet.

10. When he reached the traffic island, Rivera Siaca began to cross when he noticed an oncoming vehicle speeding and zigzagging on his lane; he quickened his step to avoid being trapped.

11. Coplaintiff Quiñones López had stayed behind on the traffic island because one of his friends had called him from the sidewalk and he had turned around to face him.

12. At that moment codefendant Pedro Manzano Pozas was approaching the area (east-west) in a Toyota Celica. Manzano stepped on the brakes when he noticed a pedestrian crossing; the car ran into the traffic island and hit coplaintiff, lifting him in the air, and throwing him on the traffic island. The car Manzano Pozas was driving had dents on the left fender, and the front left tire was flat.

13. Codefendant Manzano Pozas smelled of liquor, could not stand, and could not coordinate his movements when he walked, thus he was given the breath test which revealed a 0.17% alcohol content in his blood.

14. The accident was due solely and exclusively to codefendant Pedro Manzano Pozas's negligence, who was driving at high-speed without taking into account the conditions of the road, the presence of pedestrians crossing, and the fact that he was under the influence of alcohol.

As we have seen, coplaintiff Quiñones López had *not* tried to cross the street, but had stayed on the traffic island dividing said avenue. He was hit by Manzano Pozas as he turned around to face someone calling him from the other side. *In the normal course of events, one would not expect a car to veer off the street and run into the traffic island.* Whatever reasons Manzano Pozas had to veer off the street and run into the traffic island, they had no relation to the activities of Quiñones López.[36] Having examined the facts and the correct chain of events, as these were determined by the trial court, we conclude that the court below was correct in not applying the comparative negligence doctrine.

Finally, with regard to the trial court's assessment of the damages suffered by Quiñones López, we have repeatedly held that assessment of damages rests on the sound discretion of the trier. *Torres Solís et al. v. E.L.A. et al.,* 136 D.P.R. (1994); *Ruiz Guardiola v. Sears Roebuck,* 100 P.R.R. 816 (1972). The trial court's exercise of such discretion in damages assessments warrants great deference from this Court. *Colón v. Municipio de Guayama,* 114 D.P.R. 193 (1983); *Maldonado v. Interamerican University,* 104 D.P.R. 420 (1975). The reason for this is that courts of first instance are usually in a better position to determine the damage caused because of their direct contact with the claimant's evidence. Thus, the indemnity awards made by the trial court shall not be disturbed unless they are clearly inadequate or improper, that is, if they are "absurdly low or exaggeratedly high." *Torres Solís et al. v. A.E.E. et al.,* 136 D.P.R.1994; *Sanabria v. E.L.A.,* 132 D.P.R. (1993); *Elba A.B.M. v. U.P.R.,* 125 D.P.R. 294 (1990); *Rodríguez Cancel v. A.E.E.,* 116 D.P.R. 443 (1985): *Publio Díaz v. E.L.A.,* 106 D.P.R. 854 (1978); *Valldejuli Rodríguez v. A.S.A.,* 99 P.R.R. 890 (1971); *Prado v. Quiñones,* 78 P.R.R. 309 (1955). We cannot forget, on the other hand, that the party seeking modification of the amounts awarded by the lower court must show the circumstances that justify such modification. *Rodríguez Cancel v. A.E.E.,* 116 D.P.R. 443 (1985).

Appellant here argues that the amounts awarded were excessive compared to the awards in *Molina, Caro.* As this Court stated in *Rodríguez Cancel v. A.E.E.,* 116 D.P.R. at 452, "*[a]s we know, no two cases are exactly alike. Each case has its own and varied circumstances.* That is why —although it is advisable that trial courts be guided by the amounts awarded by this Court in 'similar' cases— the decision rendered in a specific case with regard to this matter *cannot operate as a binding precedent on another case.*"[37] (Underscore supplied.)

Insofar as Quiñones López's damages are concerned, the trial court ruled that this 50–year–old engineer

lost consciousness when impacted; suffered a displaced comminuted subtrochanteric femoral fracture beneath the lesser trochanter of the left leg; underwent subtrochanteric surgery, and had a metal plate inserted, held with nine screws; was operated a second time to remove the screws holding the plate and had a 13 mm. Zickel Nail inserted through the head of the trochanter; had a bone implant in the subtrochanteric region; took six months to recuperate from the second surgery and had to use crutches, later suffering muscle atrophy with a weakness in the leg that will never be the same; the accident affected his family and his professional life. The trial court assessed damages for Quiñones López at $151,000. [38] The court also assessed coplaintiff Rivera Mathews's—Quiñones Lopez's wife—mental anguish and sufferings at $25,000, and those of the children at $5,000 each. *Having examined the record, and the trial court's findings of fact, we conclude that the damages awarded are sustained by the evidence.*

The plaintiffs request as part of their opposition to the petition for review and brief that we correct an alleged error in the trial court judgment. They point out that Civil Procedure Rule 44.3 (32 L.P.R.A.App. III) provides for the payment of interest at the rate fixed by the Finance Board of the Office of the Commissioner of Financial Institutions, from the date judgment is rendered or from the date the complaint is filed, in damages suits where obstinacy is present. To that effect, plaintiffs move us to modify the judgment in keeping with the findings of fact so that payment of interest is ordered from the date the complaint was filed until judgment is totally and finally paid.

What plaintiffs actually seek, through this terse petition, is that we rule on appeal that appellants were obstinate in defending themselves in this case. We cannot agree to this petition. The determination of whether a party has been obstinate rests on the sound discretion of the trial court. *Elba A.B.M. v. U.P.R.,* 125 D.P.R. 294 (1990).

Now then, regardless of the fact that a defendant has not been obstinate, said party is obliged to pay the corresponding legal interest accrued on the amount awarded. Legal interest on the judgment is an integral part of the judgment rendered and may be recovered even if the judgment does not mention it. *Riley v. Rodríguez Pacheco,* 124 D.P.R. 733 (1989); *Municipio de Mayagüez v. Rivera,* 113 D.P.R. 467 (1982). Interest in this case must be paid on the amount awarded from the date the trial court rendered final judgment, using as a basis for computation the rate of legal interest in effect at said date, up to the day it is fully paid. *Riley v. Rodríguez Pacheco,* 124 D.P.R. 733 (1989); Civil Procedure Rule 44.3 (32 L.P.R.A.App. III).

For the foregoing reasons, we modify the judgment of the Court of First Instance, Superior Court of San Juan, as expressed in this opinion, and thus modified, the judgment is affirmed.

Justice Negrón García concurs in the result without a written opinion. Chief Justice Andréu García disqualified himself.

JM/cmv

Footnotes

1 Manzano Pozas subsequently moved to another rented apartment in Torre del Mar Condominium in Condado.

2 Manzano Pozas worked as chef in El Zipperle Restaurant in Hato Rey, and was off duty at the time.

3 In an affidavit taken by Nationwide, Manzano Pozas stated that he “tried to start” the car but the motor turned over slowly, made noise but would not “start.”

4 The Vehicle and Traffic Law of Puerto Rico, as amended by sec. 5 of Act No. 50 of August 9, 1989, provides that “[i]f at the time of the analysis there was ten (10) hundredths of one (1) percent or more of alcohol by volume (grams in 100th milliliters of one percent by volume of blood) in the driver's blood, it shall be presumed that the driver was under the influence of intoxicating drinks at the time the alleged violation was committed.” 9 L.P.R.A. § 1041(b)(2).

5 Femoral neck fracture (thigh bone) in which the bone or part of the same is fragmented or splinted (partial or totally displaced chips or fragments of fractured or necrotized bone). *Diccionario Tecnológico de Ciencias Médicas,* Barcelona, Ed. Salvat (12th ed.1984).

6 The original complaint filed on December 8, 1986, named the defendants as: “Pedro Manzano Pozas, his wife Jane Doe, the conjugal partnership constituted by them, Richard Doe and his wife Janet Doe, and the conjugal partnership constituted by them, and insurance companies X and Z.”

7 This third-party complaint moved the court "to rule that codefendant Nationwide Mutual Insurance Co. is obliged to provide coverage and assume [our] defense, that [Nationwide's] refusal to do so has and continues to cause [us] mental anguish in no less than $25,000.00 for each, and that said insurer should pay the attorney's fees of the undersigned."

8 Said sum breaks down as follows:

a) José A. Quiñones López.....$150,000
b) Doris Zoraida Rivera..... 25,000
c) Antonio José, Doris Julia,
and Zoraida Jasmín, each..... 5,000

9 A copy of this judgment was served on the parties on July 9, 1991.

10 This argument rests on the premise that the insured, Sabbagh, did *not* authorize her husband Manzano Pozas to use "her automobile," and with regard to which fact, argues Nationwide, no evidence was presented before the trial court.

11 Vehicle insurance, as defined by the Insurance Code, "is insurance against loss of or damage to any land vehicle or aircraft, or any draft or riding animal, or to property while contained therein or thereon or while being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, expense, or liability for loss of or damage to persons or property, resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal." Insurance Code sec. 4.070 (26 L.P.R.A. § 407); *Coop. Seguros Múltiples de P.R. v. Lugo,* 136 D.P.R. (1994).

12 The policy purchased under this contract was effective from June 12, 1985, to June 12, 1986.

13 Nationwide argues that in the absence of evidence that the covered vehicle was being repaired by bona fide mechanics or receiving bona fide maintenance, it could not be concluded that the vehicle was withdrawn from use. If we were to accept Nationwide's argument, we would have to rule that as a sine qua non prerequisite to the substitution of the insured vehicle, the covered vehicle must be taken to a mechanic or service garage where it can receive bona fide service. *We do not agree.*

We need only mention that in the United States jurisdictions it has been ruled that a defect or malfunction of a major component of an automobile—such as a dead engine, frequent stalling or bad tires—rendering the vehicle inoperable or dangerous to operate, may under the circumstances of each case, constitute a "breakdown" within the meaning of a substitution car clause. 42 ALR 4th 1145, at § 8[a].

14 *Civil Code sec. 1230 (31 L.P.R.A. § 3451).

See *Couch on Insurance* 2d (Rhodes) § 1:1.

15 In addition see, Civil Code secs. 1233–1241 (31 L.P.R.A. § § 3471–3479).

16 See, *Barreras v. Santana,* 87 P.R.R. 215 (1963); *Travelers Insurance Company v. Smith,* 328 So.2d 870 (1976); 7 Am.Jur.2d 447.

17 In an adhesion contract one party sets the terms of the contract which the other party accepts. *Zequeira v. U.R.H.C.,* 83 P.R.R. 847 (1961).

18 Nevertheless, "[b]ecause of these revisions in policy language and terms, and because a particular policy may not adhere to the usual standards, cases construing policy coverage are not persuasive if they do not deal with the same language or the same version of the standard form involved in the policy under consideration." *Meléndez Piñero v. Levitt & Sons of P.R.,* 129 D.P.R. (1991). (Underscore in the original suppressed.) Moreover, we should bear in mind "that our local code substantially regulates the Insurance Contract, Insurance Code Sec. 11.010 *et seq.* (26 L.P.R.A. §§ 1101–1137), as well as the basic principles governing the construction of the same, 26 L.P.R.A. § 1125, and Civil Code secs. 1233–1241 (31 L.P.R.A. §§ 3471–3479)." *Id.*

19 In *State Auto Property & Cas. v. Gibbs,* 444 S.E.2d 504 (S.C.1994), at the time of the accident the spouses were residing in separate dwellings. The accident occurred while the husband was driving his wife's car drunk. When they filed their respective claims both gave different addresses and the wife said she was single. Even with this conflicting evidence, the court ruled that the husband was a member of the insured wife's household for purposes of her policy, and, hence, he was an insured under the policy terms.

In Reserve Ins. Co. v. Apps., 85 Cal.App.3d 228 (1978), the spouses were separated and residing in different places. The court, considering the fact that the husband kept most of his clothes in his wife's residence and received his mail there, concluded that despite the separation the wife was covered under her husband's excess insurance coverage.

In *Hobbs v. Fireman's Fund Ame. Ins. Companies,* 339 So.2d 28 (1976), the spouses were separated and living in different states. The court ruled that there was coverage in view of the spouses evident intention to reconcile; this, along with the fact that the named insured economically supported her injured spouse, and that they lived together when the policy in question was purchased, all of which led the court to reasonably infer that the intent was to have both covered under the policy provisions.

In *Hawaiian Ins. & G. Co., Ltd. v. Federated Amer. Ins. Co.,* 534 P.2d 48 (1975), the court, taking into consideration the public policy favoring coverage extension to both spouses while still legally married, together with a possible reconciliation, ruled that the clause in question should be liberally construed to favor the insured. Consequently, the court extended coverage to protect the named insured's spouse.

In *Hartford Insurance Group v. Winkler,* 508 P.2d 8 (1973), the spouses were separated and a divorce action was pending when the accident occurred. The court ruled that the court below had correctly concluded that when the wife is living in the home with her husband at the time the policy is purchased, and the policy is silent as to when she must be residing in the named insured's home, the wife qualifies as a named insured while still married with her spouse.

In *Aetna Casualty and Surety Company v. Miller,* 276 Fed. Supp. 341 (1967), the spouses were separated and a divorce action was pending when the accident occurred. Each lived in different states and saw each other occasionally so the husband could be with their children, yet they did not maintain a common household. The court concluded that, for purposes of the insurer's policy, the wife lived in the same household as the husband and, thus, she was covered.

In *Zurich Ins. Co. v. Monarch Ins. Co.,* 247 Md. 3 (1966), the spouses who were separated at the time of the accident, later reconciled. The court took into account the reconciliation and the fact that during their separation the insured spouse continued using his wife's residence as his legal address, and ruled that the wife was a resident of her husband's household despite the fact that they were separated when the accident occurred.

In *Lumbermen's Mut. Cas. Co. v. Continental Cas. Co.,* 387 P.2d 104 (1963), the court ruled that a wife who has filed for divorce and lives with her son in the family's usual home—while her husband, the named insured, sleeps and eats outside the home, and is seeking reconciliation—lives in the same household as her husband for purposes of his policy. In this case, the insured spouse visited the family home several times a week, and passed the day there on Sundays. Moreover, he paid the house and utility bills. Likewise, he purchased the food for his wife and son, and occasionally took them out to dinner.

A contrario sensu, see, *Government Emp. Ins. v. Allstate Ins.,* 369 S.E.2d 181 (Va.1988); *Grange Mut. Cas. Co. v. State Auto Mut. Ins.,* 468 N.E.2d 909 (Ohio App.1983); *Robertson v. Lumbermen's Mut. Cas. Co.,* 286 S.E.2d 767 (Ga.App.1987); *Marlone v. Reliance Insurance Company,* 190 S.E.2d 417 (1972), *cert. denied,* 191 S.E.2d 602; *Firemen's Insurance Co. of Newark, N.J. v. Burch,* 426 S.W.2d 306 (1968), affd. in part and vacated in part on other grounds, 442 S.W.2d 331; *Agee v. Travelers Indemnity Company,* 396 F.2d 57 (1968).

20 We must reiterate that this must be seen in light of the lack of evidence showing that Sabbagh had not authorized Manzano Pozas to use the covered vehicle.

21 See, Findings of Fact No. 29, June 24, 1991 judgment, Petition for Review, App. at 32–33.

22 *Id.*

23 *Id.*

24 See, 12 *Couch on Insurance 2d* (Rhodes) §§ 45:219 and 45:221, as to substitution clause coverage:

> "The typical 'substitution' provision provides coverage while a substituted vehicle not owned by the insured is being temporarily used, where the described automobile is withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction. It indicates the intention of the insurer to cover only one automobile of the insured and to avoid covering more than one automobile for a single premium.
>
> "Its purpose is not to narrow or defeat coverage but to make the coverage reasonably definite as to the vehicles the insured intended normally to use, while at the same time permitting him to continue to drive should the particular vehicle named be temporarily out of commission, thus enabling the insurer to issue a policy upon a rate fair to both insured and insurer, rather than one at a prohibitive premium for blanket coverage of any and all vehicles which the insured might own or operate.
>
> "The purpose is to give the insured additional temporary coverage when the insured can not use his vehicle scheduled under the policy. It is generally also required that the substitute vehicle not be owned by the insured; if such coverage was ordinarily extended, the insurer would be covering an uninsured vehicle for a single premium in lieu of the insured taking out separate coverage for his automobiles.
>
> ....
>
> "A substitute coverage clause is for the benefit of the insured. Accordingly, if any construction is required of a substitute clause, it should be for his benefit. At the same time, ambiguity is not to be found where none exists, and the contract must be interpreted as written, and the substitution provision is neither to be unreasonably extended to materially increase the risk contemplated by the insurer, nor is it to be narrowly applied against the insured, inasmuch as the clause is designed for his protection. It was found that no coverage existed where policy clearly defined

the term 'owned vehicle' so that an owned uninsured vehicle was not within the scope of the temporary substitute coverage." (Footnotes omitted.)

25 Nationwide points out that "[t]he named insured, attorney Sabbagh, *never* authorized use of the covered vehicle, *never* authorized its substitution, and *never* had the substitute vehicle in her possession and control." However, we must not lose sight of the fact that although he was separated from his wife, Manzano Pozas kept an extra set of keys to the covered vehicle, *which was part of the community property,* and nothing in the record indicates that she objected or ignored such fact.

26 Overruled in other points.

27 Since, as we have said, the purpose of an insurance policy is to protect the insured, legal representation of said insured is an essential part of the coverage contracted with the insurer, and the duty to afford legal representation to the insured is broader than the duty to indemnify for damages caused by the insured to a third person. *PFZ Props. Inc. v. Gen. Acc. Ins. Co.,* 136 D.P.R. (1994); *Pagán Caraballo v. Silva, Ortiz,* 122 D.P.R. 105 (1988). The insurer's obligation to assume legal representation exists, in certain circum-stances, even when the insurer is not bound to pay damages or even if the action is groundless, false or fraudulent. *PFZ Props. Inc. v. Gen. Acc. Ins. Co.,* 136 D.P.R.1994. The insurer's obligation to assume the legal representation arises when a liberal construction of the pleadings shows a possibility that the insured is covered by the policy extension, regardless of the final outcome of the case. Nonetheless, if the pleadings clearly show that the damages claimed are not covered in the policy, the insurer cannot be compelled to assume the insured's legal representation. Any doubt as to whether the legal representation obligation exists in a given case shall be resolved in favor of the insured. *PFZ Props. Inc. v. Gen. Acc. Ins. Co.,* 136 D.P.R.1994.

28 See Robert E. Keeton and Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* 1048 (1988).

29 Discriminatory removal in violation of constitutional rights.

30 Section 1308 provides:

"Chargeable to the community property shall be:

"(1) All debts and obligations contracted during the marriage by either of the spouses.

"(2) The arrears or credits deriving during the marriage from obligations encumbering the private property of the spouses as well as the community property.

"(3) Minor repairs or mere maintenance repairs made during the marriage on the private property of either of the spouses. Major repairs shall not be chargeable to the community property.

"(4) Major or minor repairs of the community property.

"(5) The support of the family and the education of the children begotten in common and of those of either of the spouses.

"(6) Personal loans incurred by either of the spouses."

31 See, *Bothe by Gross v. American Family Ins.,* 464 N.W.2d 109 (Wis.App.1990). In this case the Court of Appeals of Wisconsin ruled that the named insured, whose separated spouse caused harm to a third person while driving his automobile, is not legally responsible for the damage since she was not involved in the accident and her husband was on no family errand. Consequently, since she is not legally responsible, and since it was stipulated that codefendants were not "living in the same household," they did not have policy coverage.

Contrary to the situation in *Bothe by Gross,* Manzano Pozas "lived in the household" of his wife, the name insured, when the accident occurred.

32 15A *Couch on Insurance 2d* (Rhodes) § 56:1.

33 See: Keeton and Widiss, *supra,* at 1051, 1054–1058; *Sparks v. Republic Nat. Life Ins. Co.,* 647 P.2d 1127 (1982); *Gulf Atlantic Life Ins. Co. v. Barnes,* 405 So.2d 916 (1981); *Continental Ins. Co. v. Bayless & Roberts, Inc.,* 608 P.2d 281 (1980).

34 William M. Shernoff, Sanford M. Gage, and Harvey R. Levine, *Insurance Bad Faith Litigation,* ch. 3, § 3.12[1][b]; *Previews, Inc. v. California Union Ins. Co.,* 640 F.2d 1026 (9th Cir.1981); *Executive Aviation, Inc. v. National Ins. Underwriters,* 16 Cal.App.3d 799, 94 Cal. Rpts. 347 (1971).

35 Overruled in *Miranda v. ELA,* 137 D.P.R. (1994), with regard to the indemnity reduction in cases of concurrent negligence by plaintiff.

36 If any degree of negligence could be charged to Quiñones López it would be so small that it would be absorbed by the greater negligence, thus excluding application of the comparative negligence rule. *Cárdenas Maxán v. Rodríguez Rodríguez,* 125 D.P.R. 702 (1990); *Toro Lugo v. Ortiz Martínez,* 113 D.P.R. 56 (1982).

141 D.P.R. 139, 1996 P.R.-Eng. 499,244, P.R. Offic. Trans.

37 See: *Elba A.B.M. v. U.P.R.,* 125 D.P.R. 294 (1990); *Widow of Silva v. Auxilio Mutuo,* 100 P.R.R. 30 (1971); *Baralt v. Báez,* 78 P.R.R. 115 (1955).

38 Although loss of earnings and medical expenses were claimed, the trial court did not award these because it believed that there was no evidence to sustain them.