Insurance Coverage Update Pennsylvania

January 2008

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For any questions on the topics addressed in this newsletter, please call Alan S. Miller at 412-288-4004 or Bridget M. Gillespie at 412-288-4017. ♦

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Pennsylvania Supreme Court Further Refines Meaning Of Occurrence And Determining Number Of Occurrences

In *Donegal Mut. Ins. Co. v. Baumhammers*, 2007 Pa. LEXIS 2886 (Pa. December 27, 2007), the Pennsylvania Supreme Court reversed in part and affirmed in part the *en banc* Superior Court decision, 893 A.2d 797 (Pa. Super. 2006), which addressed coverage for parents accused of negligence in failing to confiscate their son's weapons and/or in failing to notify the authorities of their son's unstable condition which allegedly resulted in their son shooting six people.

The Supreme Court reiterated that whether an "occurrence," defined as an "accident," has occurred is determined from the standpoint of the insured. Thus, it held that allegations that an insured's negligence enabled a third-party's intentional conduct constitutes a covered occurrence. The Court relied on its decision in *Kvaerner Metals v. Commercial Union Ins. Co.*, 908 A.2d 888 (Pa. 2006), in determining that the allegations against the insured constituted an accident: "[W]e have established that the term 'accident' . . . refers to an unexpected and undesirable event occurring unintentionally, and that the key term in the definition of the 'accident' is 'unexpected' which implies a degree of fortuity. An injury therefore is not 'accidental' if the injury was the natural and expected result of the insured's actions." From the parents' standpoint, the injuries were not the natural and expected result of their alleged negligence. Therefore, the Court affirmed the decision that an occurrence was alleged triggering the duty to defend.

The Court reversed the Superior Court's decision that six occurrences were alleged against the insureds. The Court adopted the cause test enunciated in *D'Auria v. Zurich Ins. Co.*, 507 A.2d 857 (Pa. Super. 1986), for determining the number of occurrences, with the cause being the alleged act/inaction of the insured upon which coverage is predicated: "[T]o determine the number of 'occurrences' for which an insurance company is to provide coverage, the more appropriate application of the cause approach is to focus on the act of the insured that gave rise to their liability." Thus, the parents' alleged negligence in failing to confiscate their son's weapons and/or in failing to notify the authorities of their son's unstable condition which allegedly resulted in their son shooting six people constituted a single occurrence for coverage purposes because the six injuries stemmed from one cause. ♦

New Waiver Of Stacking For Additional Vehicle May Be Required At Renewal Depending On Language Of After-Acquired Vehicle Clause

The Pennsylvania Supreme Court held that a new waiver of stacked UM/UIM coverage limits must be obtained by the insurer when an additional vehicle is added to a policy in order for the insurer to avoid stacked coverage, *Sackett v. Nationwide Mut. Ins. Co.*, 919 A.2d 194 (Pa. April 17, 2007) (*Sackett I*), but granted a request for reargument. On December 27, 2007, the Supreme Court issued its new opinion, holding that the addition of a new vehicle to the policy is not a new purchase of insurance and thus a new waiver form is not required. "However, where coverage under an after-acquired-vehicle clause is expressly made finite by the terms of the policy, *Sackett I* controls and requires the execution of a new UM/UIM stacking waiver upon the expiration of the automatic coverage in order for the unstacked coverage option to continue in effect subsequent to such expiration." The Court appeared to have been persuaded by an amicus brief of the Insurance Commissioner arguing that the holding in *Sackett I* negated the after-acquired vehicle clause found

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in automobile policies. The Court clarified that its initial opinion "does not preclude the enforcement of an initial waiver of stacked UM/UIM relative to coverage extended under after-acquired vehicle provisions of an existing multi-vehicle policy."

The Court noted that two types of after-acquired vehicle clauses exist; those providing coverage only during the reporting period and those providing coverage through the end of the policy term. The Court held that the unstacked coverage option only remains in force for the duration of the automatic coverage provided by the policy. It further confined its opinion to multi-vehicle policies, without resolving additions to single-vehicle policies.

Sackett II requires a new UM/UIM stacking waiver form to be obtained at the expiration of the automatic coverage period provided by the after-acquired vehicle clause. ♦

MVFRL Does Not Require UM/UIM Stacking For Commercial Fleet Policy

Section 1738 of the MVFRL does not require UM/UIM stacking for fleet policies. *Everhart v. PMA Ins. Group*, (Pa. December 27, 2007). In *Everhart*, PMA issued a commercial auto policy to Russell Standard Corporation which covered 323 vehicles, 33 of which were passenger vehicles. The plaintiff's decedent was the CEO of a division of the insured who was killed while driving a company car. The policy contained limits of $1,000,000 for liability coverage, but only $35,000 for UM/UIM coverage. PMA did not offer stacked UM/UIM coverage to commercial insureds and did not obtain a waiver form. The plaintiff sought to stack coverage for the 33 passenger vehicles, arguing that the statute mandating UM/UIM waiver of stacking does not distinguish between commercial and non-commercial policies.

The Court held that while the statute is silent on this issue, the wording in the form waiver indicates a legislative intent to exclude fleet policies because it states that the named insured waives coverage "for myself and members of my household." Also, mandating stacking of coverage in a fleet policy would undermine the purpose of the statute, which is to control insurance costs. Additionally, it noted that statutes are not presumed to change existing law unless expressly declared. At the time of the enactment of this statute, case law abounded holding that UM/UIM stacking did not apply to fleet policies. Thus, it held that the statute did not mandate stacking in fleet policies and therefore did not require a waiver.

Justice Baldwin concurred in the opinion, noting that the statutory construction analysis done by the Court was unnecessary because the statute did not apply to a named insured corporation. Section 1702 defines "insured" and "named insured" in the context of an individual and people with certain relationships to that individual, thus a corporation does not fit either definition. ♦

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