

Insurance Coverage Update Pennsylvania

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Pennsylvania Supreme Court Requires New Waiver of Stacked UM/UIM Coverage When A New Car Is Added To A Policy

In Sackett v. Nationwide Mut. Ins. Co., 2007 Pa. LEXIS 835 (Pa. April 17, 2007), in a 4-2 decision, the Pennsylvania Supreme Court affirmatively answered the following question:

Does the Pennsylvania Motor Vehicle Financial Responsibility Law (the MVFRL), 75 Pa.C.S. §§ 1701-1799.7, require automobile insurers to provide first named insureds the opportunity to waive the stacked limits of uninsured/underinsured (UM/UIM) coverage for each instance an insured purchases UM/UIM coverage by adding a vehicle to an existing policy?

Id. at *1 (footnotes omitted). The facts of the case were simple. The insureds purchased a policy covering two vehicles, including \$100,000 in UM/UIM coverage, but rejected stacked limits. Two years later, the insureds purchased a third vehicle and added it to the same policy. No new waiver of stacked UM/UIM limits was made. Ten days later, the first named insured was injured in an accident with an underinsured driver and sought stacked UIM coverage which Nationwide denied due to the waiver on file from the inception of the policy. The trial court granted Nationwide's summary judgment motion and the Superior Court affirmed.

The Supreme Court reversed, finding the statutory language clear: "Each named insured purchasing uninsured or underinsured motorist coverage for more than one vehicle under a policy shall be provided the opportunity to waive the stacked limits of coverage and instead purchase coverage as described in subsection (b)." 75 Pa. C.S. § 1738(c). The Supreme Court rejected the Superior Court's and Nationwide's reliance on the Third Circuit opinion in Rupert v. Liberty Mut. Ins. Co., 291 F.3d 243 (3d Cir. 2002) (holding new waiver of stacked UM/UIM coverage need not be obtained when first named insured changes), and the Superior Court opinion in Smith v. The Hartford Ins. Co., 849 A.2d 277 (Pa. Super. 2004) (holding new waiver of UM/UIM coverage not required when policy's liability limits were raised based on statutory language of §§ 1731 and 1791), finding them inapplicable, distinguishable and nonbinding. The Court keyed in on the fact that § 1738 is written in the present tense, the impossibility of purchasing UIM coverage for a vehicle prior to the insured's purchase of the vehicle itself and the amount of available stacked limits rises with the purchase of each additional vehicle:

Adding a vehicle to an existing policy constitutes a purchase within the meaning of the statute and entitles insureds who select UM/UIM coverage the opportunity to waive the new sum of available stacked limits of that coverage. Only in the area of stacking is the sum of available coverage dependent on the number of vehicles on the policy. This sum, of course, is increased each time an insured purchases coverage for an additional vehicle. In contrast, if an insured decides to waive all UM/UIM coverage, as in Smith, the coverage limits waived at inception are not affected by a subsequent decision to purchase insurance for additional vehicles.

Id. at *13. The Court held that despite the failure to pay premiums for stacked coverage, the insured was entitled to stacked coverage because the default coverage is stacked in the absence of a valid waiver. Id. at *21. Thus, rejecting Nationwide's public policy argument. (The Court, however, did state that "today's holding does

not extend to circumstances where an existing named insured simply replaces a vehicle, or renews an existing policy. Such changes are not purchases of coverage within the meaning of Section 1738.” Id. at *22.)

The dissent, authored by Justice Castille, disagreed that the language of § 1738 requires a new waiver form with the addition of a new car and stated that the statute does not address this factual situation. Moreover, Justice Castille wrote that the majority’s conclusion that the addition of a new vehicle constitutes a purchase of insurance is unsupported by other sections of the MVFRL, most notably § 1791 which specifically states that “an insurer is not required to provide new notices or rejections whenever such an event occurs,” and prior decisions of the Supreme Court, notably Craley v. State Farm Fir and Cas. Co., 895 A.2d 530 (Pa. 2006) (holding insured not entitled to benefits for which no premiums paid).

Based on the majority opinion, automobile insurers and their agents must provide insureds a new waiver of UM/UIM stacking form every time an additional vehicle is added to a policy with UM/UIM coverage. ♦

Jeffrey J. Ludwikowski Joins PSMN

Jeffrey J. Ludwikowski has joined Picadio Sneath Miller & Norton, P.C. as a partner with federal and state court trial



experience in insurance coverage, commercial disputes, construction claims, bankruptcy, RICO, environmental issues and products liability defense. He is admitted to practice before the State and Federal Courts in both Pennsylvania and California as well as to the United States Supreme Court. Mr.

Ludwikowski graduated from the University of Southern California in 1983 and received his J.D. degree *cum laude* in 1987 from Southwestern University School of Law. While in law school, Mr. Ludwikowski served as managing editor of the Law Review and was nationally recognized for his oral advocacy skills. Mr. Ludwikowski is a frequent lecturer and course planner for seminars on a wide range of commercial litigation, professional responsibility and trial technique topics. **He is Peer Review Rated AV by Martindale Hubbell.** ♦

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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