Stacking of UM/UIM Coverages for Newly Acquired Vehicles

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Special to the Legal

Under the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. Section 1701 et seq., stacking of uninsured motorist (UM) and underinsured motorist (UIM) coverages may be waived. Absent a valid waiver, stacking is mandated, see 75 Pa. C.S.A. Section 1738. In *Sackett v. Nationwide*, 919 A.2d 194 (Pa. 2007) (*Sackett I*), the Supreme Court held that a new waiver of stacking of UM and UIM coverage is needed when a new, additional vehicle is added to an existing unstacked policy. On reconsideration, in *Sackett v. Nationwide*, 940 A.2d 329 (Pa. 2007) (*Sackett II*), the court recognized a narrow exception to this rule, namely where a new vehicle is added to an existing policy by operation of a continuous newly acquired vehicle clause. The interpretation and application of these holdings continues to create controversy in Pennsylvania.

NEWLY ACQUIRED CLAUSE

Auto policies generally identify three types of insured vehicles, namely: listed autos; newly acquired autos; and replacement autos. Listed autos are afforded coverage by reason of being specifically identified on the declarations pages of the policy. Newly acquired autos and replacement autos are automatically extended coverage under the policy even before the insurer is advised of the acquisition, thereby avoiding any gap in coverage. These newly acquired and replacement clauses generally extend coverage for a period of time provided the insurer is given notice of the acquisition within that period. By creating a limited exception to the mandate of *Sackett I*, the Supreme Court in *Sackett II* recognized that it would be unreasonable to require an insurer to secure a stacking waiver for a vehicle for which coverage was provided by operation of the newly acquired clause since, by the very nature of the clause, the insurer did not yet know the insured had purchased the vehicle. An insurer could not be required to secure a waiver of stacking for a vehicle it did not yet know the insured has purchased. Thus, in *Sackett II*, the court held that where a new vehicle is added to an existing policy by reason of a continuous newly acquired clause (extending coverage without any time limit or any notice requirement), no new stacking waiver is needed. Where a new vehicle is added, however, by reason of a finite newly acquired clause (extending coverage with a time limit and a notice requirement), a new stacking waiver is, in fact, needed. The manner in which the new vehicle is added to the policy, therefore, is crucial to the resolution of the stacking issue for the newly acquired vehicle.

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> *"In 'Sackett I' and 'Sackett II,' the Supreme Court established rules to be applied in order to determine whether stacked UM or UIM coverage is to be provided under an existing unstacked policy when new vehicles are added to that policy.*

ADDITION OF VEHICLES

Although a new vehicle may be added to an existing policy by operation of a newly acquired clause, in reality the newly acquired clause is rarely triggered. Instead, most vehicles are added by endorsement, i.e., the issuance of amended declarations pages identifying the new vehicle as a listed vehicle on the policy. In *Sackett v. Nationwide*, 4 A.3d 637 (Pa. Super. 2010) (*Sackett III*), the Superior Court recognized that where the insured notifies the insurer of the acquisition before or at the time of purchase, the newly acquired clause is never triggered and a new stacking waiver is

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needed. Many insurers, however, have refused to recognize the limited application of *Sackett II*, instead contending that all new vehicles are added to policies by operation of newly acquired clauses, thereby obviating any need for any new stacking waivers. Despite the rejection of this position by the Superior Court, many carriers continue to insist that new stacking waivers are not needed for all newly acquired vehicles, regardless of the mechanism of extension of coverage under the policy at issue.

CASE LAW

Several Superior Court decisions have addressed the application of the *Sackett* rules. In *Bumbarger v. Peerless*, 93 A.3d 872 (Pa. Super. 2014), the en banc Superior Court established the methodology for determining the need for a new stacking waiver when a new vehicle is added to an existing, unstacked policy. The en banc court emphasized that the initial focus must be upon the manner in which the vehicle was added to the existing policy, i.e., via endorsement or newly acquired clause. If the vehicle was added by operation of the newly acquired clause, then the type of clause involved (i.e., continuous or finite) must be determined. If the new vehicle is added by being listed as an insured vehicle in amended declarations pages, the type of newly acquired clause in the policy is irrelevant since it is never triggered. In *Bumbarger*, the new vehicle was added to the policy "by endorsement at the time of purchase" by the issuance of amended declarations pages. In that situation, which is the most common mechanism of extending coverage for a new vehicle under an existing policy, the newly acquired clause is never triggered. Thus, the second part of the analysis is unnecessary. Since the new vehicle became insured as a listed vehicle, not by reason of the newly acquired clause, a new stacking waiver was needed. Absent that waiver, stacked coverage must be provided.

This same rationale was adopted by the Superior Court in *Pergolese v. Standard Fire*, 162 A.3d 481 (Pa. Super. 2017) and *Newhook v. Erie*, 2018 Pa. Super. Un. Pub. LEXIS 1303 (Pa. Super. 2018). In both of those cases, the court recognized that when a new vehicle is added to a policy by endorsement, namely the issuance of Amended Declarations Pages, the newly acquired clause is not triggered. As such, under *Sackett I*, a new stacking waiver is necessary; the limited exception of *Sackett II* does not apply. Nonetheless, many insurers refuse to recognize the holding of these cases, instead contending that every new vehicle is added to a policy by operation of the newly acquired clause regardless of the specific facts, thereby eliminating any obligation to secure a new stacking waiver. In so doing, those insurers rely upon *Toner v. Travelers*, 137 A.3d 583 (Pa. Super. 2016), a panel decision of the Superior Court that failed to even reference the binding precedent of *Bumbarger*. The *Toner* decision is fatally flawed in refusing to recognize the different ways in which new vehicles may be added to policies, stating instead that adding vehicles by endorsement versus via a newly acquired clause is merely a "difference without a distinction." Thus, in that case even though Patricia Toner had notified Travelers of the purchase of her new vehicle before she actually took possession, thereby causing Travelers to add the new vehicle to her policy as a listed vehicle by endorsement, i.e., the issuance of amended declarations pages, the court in *Toner* found that the newly acquired clause had implemented the insurance coverage, thereby obviating the need for a new stacking waiver. Insurers have latched onto the *Toner* decision to justify their failure to secure new stacking waivers for new vehicles. This justification is misguided.

CONCLUSION

In *Sackett I* and *Sackett II*, the Supreme Court established rules to be applied in order to determine whether stacked UM or UIM coverage is to be provided under an existing unstacked policy when new vehicles are added to that policy. Under *Sackett* and its progeny new stacking waivers are needed unless the new vehicle is added to the policy by operation of a continuous newly acquired clause. Such situations, however, are relatively rare. Most new vehicles are customarily added to policies by endorsement, i.e., the issuance of amended declarations pages identifying the new vehicle as a listed vehicle on the policy after receipt of notice from the insured of the acquisition of the vehicle. Until all insurers recognize the binding precedent of *Bumbarger*, controversy regarding these stacking issues will continue. •