

Insurers Must Obtain a New UM/UM Stacking Waiver When Any Change is Made to UM/UM Coverage

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Auto insurance Uninsured (UM) and Underinsured Motorist's (UIM) coverage is generally stacked, but such stacking can be waived under Pennsylvania's Motor Vehicle Financial Responsibility Law ("MVFRL"). 75 Pa.C.S. § 1738(c). The MVFRL specifies that if an insurer does not obtain a valid stacking waiver, UM/UIM coverage is deemed stacked. § 1738(a), (b).

Section 1738(c) is the subject of much litigation in Pennsylvania, and states "[e]ach 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."

In *Barnard v. Travelers Home and Marine Ins. Co.* the court held an increase in UIM coverage constitutes a "purchase" and requires a new signed stacking waiver. 216 A.3d 1045 (Pa. 2019).

In *Sackett v. Nationwide Mut. Ins. Co.*, the court held the addition of a new vehicle to an existing policy changes the UIM coverage limit (i.e. the two-vehicle \$100,000 stacked policy's UIM coverage of \$200,000 will change to \$300,000 with the addition of a third vehicle), which constitutes a "purchase" under § 1738 and requires a new stacking waiver. 919 A.2d 194 (Pa. 2007).

In *Shipp v. Phoenix Ins. Co.*, the court held a replacement vehicle does not change in the amount of stacked coverage and does not require a new stacking waiver. *Shipp v. Phoenix Ins. Co.*, 51 A.3d 219, 223-24 (Pa. Super. 2012).

On a question of first impression in Pennsylvania, the Superior Court, in *Robert and Kelly A. Franks v. State Farm Mut. Auto. Ins. Co.*, analyzed whether a decrease in UIM coverage or removal of a vehicle from the policy requires a new stacking waiver. No 2784 EDA 2019, 2020 WL 4391420 (Pa. Super. July 31, 2020).

Robert and Kelly Franks ("Franks") held automobile insurance coverage with State Farm for three vehicles with \$100,000 in UIM coverage and a properly signed stacking waiver. In July 2014, the Franks removed one of the three vehicles from their policy but did not sign a new stacking waiver. No change was requested or made to the coverage of the remaining two vehicles. From July 2014 on, the State Farm policy insured two vehicles continuously with the declarations page providing non-stacked UIM coverage and with no premium charged for stacked coverage.

On August 11, 2016, Robert Franks was involved in a motor vehicle accident while driving one of his two State Farm-insured vehicles. He recovered from the at-fault party's policy, which was insufficient, and filed a UIM claim under his State Farm policy, with State Farm paying out the limits of the policy's \$100,000 *non-stacked* UIM coverage. The Franks asserted they were owed a total of \$200,000 in *stacked* UIM coverage under their policy and brought a declaratory judgment suit in the Bucks County, Pennsylvania Court of Common Pleas. The court found in

favor of State Farm, finding the Franks' policy contained non-stacked coverage in the amount of \$100,000, which State Farm had paid out to the Franks.

The Franks appealed the trial court's finding to the Superior Court of Pennsylvania, and the issue on appeal was whether State Farm was required to obtain a new stacking waiver when the Franks decreased the number of vehicles covered under the policy in July 2014.

The Court relied on the finding in *Shipp v. Phoenix Ins. Co.*: “[t]he matter of importance in these cases, as well as in section 1738, *pertains only to the UM/UIM policy coverage, whether it has changed*, and whether a new waiver of stacked coverage is required.” 51 A.3d at 223-24. It analogized *Shipp*, *Sackett*, and *Barnard* to the instant facts. The Court found in a 2-1 decision that. “[s]ection 1738(c) of the MVFRL requires a new stacking waiver whenever the stacked amount of UIM coverage *changes* – regardless of whether the change is an increase or decrease in the amount of stacked coverage.” Judge Lazarus dissented from the majority opinion, arguing that a decrease in coverage does not constitute a “purchase.”

TAKEAWAY: In ANY instance of change in UM/UIM coverage, whether it constitutes an increase in coverage, a decrease in coverage, or the addition or removal of a vehicle, the insurer or broker must obtain a new UM/UIM stacking waiver. Ensuring compliance with the regulations and common law surrounding such waivers should be a priority for insurers, lest they be required to provide larger, stacked coverage limits even if premiums are calculated on the assumption of unstacked coverage.