[J-117-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

VICTOR M. SACKETT AND DIANA L. SACKETT,	:	No. 8 WAP 2006
Appellants	:	Appeal from the Order of the Superior Court entered July 14, 2005, at No. 2273 WDA 2003, affirming the Order of the Court of Common Pleas of Westmoreland County entered November 20, 2003, at No. 5057 of 2002.
v.	:	
NATIONWIDE MUTUAL INSURANCE COMPANY,	:	880 A.2d 1243 (Pa. Super. 2005)
Appellee	:	
	:	ARGUED: September 13, 2006

DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: APRIL 17, 2007**

The Majority Opinion addresses the question of whether adding a new vehicle to an existing automobile insurance policy, where the insured had previously rejected "stacking" the uninsured/underinsured ("UM/UIM") coverage on multiple vehicles, triggers a requirement that the insurer must provide the insured with an additional and separate opportunity to reject stacking for the newly insured vehicle. The Majority concludes that the insurer is required to provide the insured with the opportunity to waive UM/UIM stacking when a new vehicle is added to an existing policy. I respectfully disagree with the Majority's imposition of this requirement, and, therefore, I dissent.

Appellants had been insured by Nationwide Mutual Insurance Company for two years when Victor Sackett suffered serious injuries in an automobile accident while riding

as a passenger in an automobile that collided with another vehicle. At the inception of their policy, appellants had insured two automobiles with Nationwide and had specifically rejected stacking their UM/UIM benefits, a selection which reduced their premium payments. On July 26, 2000, appellants added a third vehicle to their existing Nationwide policy. Appellants did not request a stacking option for the new vehicle, and Nationwide did not seek or secure a new waiver of stacking at that point. Ten days later, Victor Sackett was injured in the accident that gave rise to this litigation. After collecting the policy limits on the policies insuring the two drivers involved in the accident, appellants sought underinsured motorist benefits under their Nationwide policy, asserting that they were entitled to stacked benefits because they did not reject stacking when they added the third vehicle to the policy. Nationwide responded that coverage was unstacked for all three vehicles in accordance with the stacking waiver appellants had executed at the inception of the policy.

The crux of appellant's argument on appeal is that when a new vehicle is added to an existing policy, the insurer must offer a new waiver of stacking form, and the failure to do so automatically results in the insurer being deemed liable for stacked benefits. Nationwide counters that there is nothing in the language of the Motor Vehicle Financial Responsibility Law ("MVFRL") that requires the execution of a new waiver when a new vehicle is added to an existing policy, and that the waiver appellants executed at the inception of the policy applies, resulting in unstacked benefits. I agree with Nationwide that the statute does not require a new waiver, and this Court should not interpose such a requirement.

Section 1738 of the MVFRL governs stacking and waiver of UM/UIM benefits and establishes the procedure for waiver:

> (**a) Limit for each vehicle.--**When more than one vehicle is insured under one or more policies providing uninsured or underinsured motorist coverage, the stated limit for uninsured or underinsured coverage shall apply separately to each vehicle so insured. The limits of coverages available under this

> subchapter for an insured shall be the sum of the limits for each motor vehicle as to which the injured person is an insured.
>
> **(b) Waiver.--**Notwithstanding the provisions of subsection (a), a named insured may waive coverage providing stacking of uninsured or underinsured coverages in which case the limits of coverage available under the policy for an insured shall be the stated limits for the motor vehicle as to which the injured person is an insured.
>
> **(c) More than one vehicle.--**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). The premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

75 Pa.C.S. § 1738 (a)-(c). Nothing in the statutory language explicitly addresses the factual scenario presented here – *i.e.*, the statute does not state that when an insured adds an additional vehicle to an existing policy, new waivers must be executed. Nevertheless, the Majority today reads such a requirement into Section 1738(c) by concluding that the addition of the third vehicle to appellants' existing multi-vehicle policy constituted an entirely new purchase of insurance, reasoning that appellants could not have purchased insurance for the third vehicle prior to acquiring that vehicle. It follows, according to the Majority, that appellants could not have waived stacked benefits relative to the third vehicle at a time when they only owned two vehicles. Because Nationwide failed to provide appellants with an opportunity to waive stacking when they added the third vehicle, the Majority finds that appellants did not waive stacking for the third vehicle.

In my view, the Majority's conclusion is unsupported by other sections of the MVFRL, the policies underpinning the MVFRL, and prior decisions of this Court. Section 1791 specifically addresses when an insured must be provided with notice of available coverages and benefits:

> It shall be presumed that the insured has been advised of the benefits and limits available under this chapter provided the following notice in bold print of at least ten-point type is given to the applicant **at the time of application for original coverage, and no other notice or rejection shall be required** . . . .

75 Pa.C.S. § 1791 (emphasis supplied). The Majority dismisses the clear language of this Section as irrelevant because the Section does not explicitly discuss the effect of adding a vehicle on an existing waiver of stacking. Such a facile dismissal of clear legislative intent is, in my opinion, unwarranted.

The legislative branch is not obliged to list all possible, specific applications of a general statutory provision or principle. Section 1791 is an unambiguous expression of the General Assembly's intention that insurers need only provide insureds with notices **or rejections** relative to their coverage at the inception of the policy. Section 1791 obviously was intended to ease the burden on insurers by expressly not requiring them to provide new notices or rejections on every occasion when an insured makes some change to existing coverage. Insured motorists typically make many changes in their insurance policies during the lifetime of a given policy: substituting a new vehicle for an insured vehicle; adding an additional vehicle, deleting a vehicle, adding or deleting insured family members; increasing or decreasing coverages or deductibles. In very plain language, Section 1791 directs that an insurer is not required to provide new notices or rejections whenever such an event occurs. Although Nationwide could have sought new rejections of coverage when appellants added the third vehicle to their policy, nothing in the statute obliged them to do so. The failure of the General Assembly to require such administrative redundancy makes logical sense as appellants did not purchase a new policy, but simply added a vehicle to an existing policy. The same policy appellants purchased in 1998 remained in effect, and the original waiver of stacking was part of that policy.

This Court has long recognized the cost containment policy underlying the MVFRL. See Pennsylvania Nat'l Mut. Cas. Co. v. Black, 916 A.2d 569 (Pa. 2007); Craley v. State Farm Fire and Cas. Co., 895 A.2d 530 (Pa. 2006); Burstein v. Prudential Prop. and Cas. Ins. Co., 809 A.2d 204 (Pa. 2002); Lewis v. Erie Ins. Exch., 793 A.2d 143 (Pa. 2002). See also Senate Journal, Oct. 4, 1983, 1142-53; House Journal, Dec. 13, 1983, 2139-59. In this instance, the Majority's decision thwarts this policy in two ways. First, requiring insurers to provide new rejections when an insured makes a policy change imposes a burden on insurers that could, and likely will, result in costs of compliance being passed on to insureds. Second, the Majority awards appellants a benefit for which they did not pay premiums. The costs to insurers of providing benefits to insureds for which premiums were not paid will certainly increase premiums for other insureds. Therefore, the Majority's decision is contrary to the policies underlying the MVFRL.

Finally, this Court has also consistently held that an insured is not entitled to benefits for which he has not paid premiums:

> [T]he public policy of cost-containment "functions to protect insureds against forced underwriting of unknown risks that insureds have neither disclosed nor paid to insure," and prevents insureds from "receiving gratis coverage." Burstein, 809 A.2d at 208. Thus, insurers are not "compelled to subsidize unknown and uncompensated risks by increasing insurance rates comprehensively." Id.; see Eichelman [v. Nationwide Ins. Co., 711 A.2d 1006, 1010 (Pa. 1998)] (acknowledging the significance of the "correlation between premiums paid by the insured and the coverage a claimant should reasonably expect to receive"); [Prudential Prop. and Cas. Ins. Co. v.] Colbert, [813 A.2d 747, 760 (Pa. 2002)] (Castille, J., dissenting) ("The overriding concern powering the decisions in Burstein; Eichelman and the other earlier cases is to ensure that both the insurer and insured receive the benefit of what is statutorily required and contractually agreed-upon (consistently with statutory requirements) and nothing more.").

Craley, 895 A.2d at 542. Here, appellants specifically waived stacking of UM/UIM benefits at the inception of their policy, with a resultant decrease in premiums. The change in the

policy was at appellants' request, not a solicitation from Nationwide, and appellants indicated no interest in purchasing new stacking coverage and the additional premium that coverage would entail. The end result of the Majority's decision is that, despite the explicit initial waiver and concomitant reduced premiums appellants enjoyed, appellants nevertheless will secure the windfall of stacked benefits, benefits for which they never paid premiums.

I respectfully dissent.

Mr. Justice Eakin joins this dissenting opinion.