

**[J-83-2007]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

**CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, FITZGERALD, JJ.**

ROBERT D. EVERHART AND	:	No. 13 WAP 2007
CHRISTINE J. YOST,	:	
ADMINISTRATORS OF THE ESTATE OF	:	Appeal from the Order of the Superior
ROBERT E. EVERHART, DECEASED,	:	Court entered October 31, 2006 at No.
	:	2234 WDA 2005 entered October 31,
Appellants	:	2006, affirming the Order of the Court of
	:	Common Pleas of Erie County entered
v.	:	November 18, 2005 at No. 10777-2003.
	:	
	:	
THE PMA INSURANCE GROUP, A	:	
PENNSYLVANIA CORPORATION,	:	ARGUED: September 10, 2007
MEYER & ECKENRODE INSURANCE	:	
GROUP, A PENNSYLVANIA BUSINESS	:	
ENTITY, STATE FARM MUTUAL	:	
AUTOMOBILE INSURANCE COMPANY,	:	
AN ILLINOIS CORPORATION, AND	:	
RUSSELL STANDARD CORPORATION	:	
CORP., A PENNSYLVANIA	:	
CORPORATION,	:	
	:	
Appellees	:	

**CONCURRING OPINION**

**MADAME JUSTICE BALDWIN**

**DECIDED: DECEMBER 27, 2007**

I concur in the result of the majority opinion, but based upon different reasoning. I agree with the majority that “[t]he question of whether Section 1738 mandates the stacking of coverage under a commercial fleet policy raises an issue of statutory construction; therefore we are guided by the Statute Construction Act. 1 Pa.C.S. § 1501 *et seq.*” Majority slip op. at 5. However, the analysis employed by the majority

delves into the intent of our Legislature in enacting 75 Pa.C.S. § 1738 when the words of the subject statute are clear, i.e. there is no ambiguity and the majority fails to cite one. Therefore, pursuant to 1 Pa.C.S. § 1921(b), the role of this Court is to give effect to the words of the statute without reviewing the factors delineated in 1 Pa.C.S. § 1921(c) which are to be considered only if “the words of the statute are not explicit.”<sup>1</sup>

Stacking of uninsured and underinsured benefits and option to waive.

- (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

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<sup>1</sup>

Legislative intent controls.

- (a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.
- (b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.
- (c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:
  - (1) The occasion and necessity for the statute.
  - (2) The circumstances under which it was enacted.
  - (3) The mischief to be remedied.
  - (4) The object to be attained.
  - (5) The former law, if any, including other statutes upon the same or similar subjects.
  - (6) The consequences of a particular interpretation.
  - (7) The contemporaneous legislative history.
  - (8) Legislative and administrative interpretations of such statute.

1 Pa.C.S. § 1921.

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.
- (d) Forms.
  - (1) The named insured shall be informed that he may exercise the waiver of the stacked limits of uninsured motorist coverage by signing the following written rejection form:

...

...

75 Pa.C.S. § 1738.

To determine if stacked coverage is available in the instant case, it must first be ascertained whether Russell Standard Corporation was an “insured” for purposes of Section 1738. If Russell Standard Corporation was not an “insured,” whether stacking of UM/UIM coverage was waived becomes irrelevant. For reasons explained below, I would conclude that a corporation, such as Russell Standard, is not an “insured” within the definition of that term set forth in Section 1702 of the Pennsylvania Motor Vehicle Financial Responsibility Law (“the MVFRL”), 75 Pa.C.S. §§ 1701-1799.7. For purposes of this analysis and by definition, Everhart was a class two insured by virtue of his

presence in a covered vehicle. See Utica Mutual Ins. Co. v. Contrisciane, 504 Pa. 328, 337-39, 473 A.2d 1005, 1010 (1984).

Section 1738, which establishes the statutory parameters for stacking of UM/UIM benefits, expressly limits the provision of coverage “available under this subchapter for an insured,” and explains that only a “named insured” may waive stacking of UM/UIM benefits. 75 Pa.C.S. § 1738(a),(b) (emphasis added). Section 1738(c) further explains “each named insured purchasing” UM/UIM coverage is mandatorily provided the opportunity to waive the available stacked limits of it. Section 1738(d) prescribes the forms by which a “named insured” is advised that “he” may waive UM/UIM coverage.

Turning to Section 1702 of the MVFRL, an “insured” is defined as:

Any of the following:

- (1) An individual identified by name as an insured in a policy of motor vehicle liability insurance.
- (2) If residing in the household of the named insured:
  - (i) a spouse or other relative of the named insured; or
  - (ii) a minor in the custody of either the named insured or relative of the named insured.

75 Pa.C.S. § 1702. Section 1702 provides the definition of who is a “named insured,” and explains that human beings with specific relationships to a “named insured” are also “insureds.”<sup>2</sup> There is no definition for a “named insured” who is not a human

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<sup>2</sup> This is consistent with the policy language, which states:

- ...
- B. Who Is An Insured
1. You.
  2. If you are an individual, any “family member.”
- ...

R. 476-77a.

being.<sup>3</sup> See e.g. Ins. Co. of Evanston v. Bowers, 758 A.2d 213 (Pa. Super. Ct. 2000) (a corporation does not fall within the definition of an “insured” set forth in Section 1702); Employers Mut. Cas. Co. v. Loos, 476 F.Supp.2d 478, 485 (W.D.Pa. 2007) (explaining that “[t]he MVFRL’s definition [of an “insured”], by its language, is applicable only where the named insured *is an individual person.*”) (emphasis added); See also U.S. Fidelity and Guar. Co. v. Tierney Assoc., Inc., 213 F.Supp.2d 468 (M.D.Pa. 2002).

Given this construction of Section 1702, Appellants’ reliance upon the lack of a Section 1738(b) waiver proves unavailing. As explained above, there is no “named insured,” for purposes of the MVFRL, in the subject policy. Therefore, when a commercial fleet policy is issued to a corporate entity, as here, the only scenario under which a human being would fall within the definition of an “insured” under Section 1702 such that he or she would be entitled to the provisions of Section 1738 is if the corporation specifically named him. Russell Standard Corporation could never have purchased—let alone waived—stacking of UM/UIM benefits in the first place.

I agree with the majority that the Superior Court’s decision in Miller v. Royal Ins. Co., 354 Pa.Super. 20, 22, 510 A.2d 1257, 1258 (1986), aff’d per curiam, 517 Pa. 206, 535 A.2d 1049 (1988)), was clear that UM/UIM coverage could not be stacked under a

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<sup>3</sup> I find further support for this construction by reading the various provisions of the subject statute, as they must be read, in pari materia. 1 Pa.C.S. § 1932. While Section 1702(1) standing alone could be read to include all individuals identified by name anywhere in the policy, raising questions about the importance of Everhart’s inclusion by name on the endorsements described above, this becomes impossible when read in the light provided by Section 1702(2). In Section 1702(2), the Legislature explains that the “individual” in Section 1702(1) is in fact the “named insured.” Section 1702(2) also limits which human beings are to be accorded the status of “insured” vis a vis their relationship with the “named insured” described in Section 1702(1). No human being could ever fall within Section 1702(2) if Section 1702(1) was meant by the Legislature to include the corporate form; a corporation has neither a household nor resident relatives.

fleet, i.e. commercial, policy.<sup>4</sup> This Court has repeatedly explained that statutes are to be read to be in accord with existing case law. See e.g. March v. Philadelphia & West Chester Traction Co., 285 Pa. 413, 415, 132 A. 355, 356 (1926). Miller was case law when Section 1738 was enacted.<sup>5</sup> I find that the clarity of the holding in Miller, coupled with the presumption that statutes are in accord with existing common law principles, provides additional, although perhaps unnecessary, support for the conclusion that the plain language of the MVFRL does not countenance stacking under circumstances like those presented here. Consequently, I agree with the majority that the decision of the Superior Court should be affirmed.

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<sup>4</sup> This concurring opinion is driven by my reading of the language of Sections 1702 and 1738 of the MVFRL, rather than either an interpretation of a policy goal, as explained above, or the imputation of expectations upon commercial insureds and their insurers.

<sup>5</sup> Miller was decided by the Superior Court in 1986 and affirmed by this Court in 1988. Section 1738 was enacted in 1990.