2013 PA Super 47

HELEN B. BUMBARGER AND RONALD C. BUMBARGER, HER HUSBAND,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellees	:	
v.	:	
PEERLESS INDEMNITY INSURANCE COMPANY,	:	
Appellant	:	No. 354 WDA 2012

Appeal from the Order of February 3, 2012,
in the Court of Common Pleas of Clearfield County,
Civil Division at No. 2010-1563-CD

HELEN B. BUMBARGER AND RONALD C. BUMBARGER, HER HUSBAND,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellees	:	
v.	:	
PEERLESS INDEMNITY INSURANCE COMPANY,	:	
Appellant	:	No. 569 WDA 2012

Appeal from the Judgment of March 19, 2012,
in the Court of Common Pleas of Clearfield County,
Civil Division at No. 2010-1563-CD

BEFORE: MUSMANNO, WECHT and COLVILLE*, JJ.

DISSENTING OPINION BY COLVILLE, J.: Filed: March 8, 2013

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*Retired Senior Judge assigned to the Superior Court.

On appeal, Appellant argues that this case is distinguishable from ***Sackett III***. Appellant maintains that Appellees' policy's "after-acquired vehicle" clause continuously insured Appellees' third and fourth vehicles, as long as Appellees informed Appellant of the purchase of the vehicles within fourteen days. Appellant further maintains that the Endorsement that followed the purchase of Appellees' third vehicle and the Amended Declarations Pages that followed the purchases of Appellees' third and fourth vehicles simply documented an event that already had occurred - namely, the policy insured the newly acquired vehicles from the date of their purchase. Appellant argues that, because Appellees' vehicles were continuously insured by the policy's "after-acquired vehicle" clause, pursuant to ***Sackett II***, Appellant did not have to have Appellees sign new stacked UM waivers when Appellees purchased these vehicles. According to Appellant, the original stacked UM waiver signed by Appellees remained in effect at the time of Appellees' accident; thus, the trial court erred by requiring Appellant to provide stacked UM coverage to Appellees. I agree with Appellant.

My agreement with Appellant is informed by the following analysis in ***Sackett II***:

> It remains to consider the disagreement concerning the duration of the automatic coverage under an after-acquired-vehicle provision. Decisions from other jurisdictions suggest that both varieties of after-acquired-vehicle clauses (those that afford closed-term coverage solely during the reporting period and those that contemplate continuing coverage) are utilized in

automobile insurance policies. For example, in ***Bird v. State Farm Mutual Automobile Insurance Company***, 142 N.M. 346, 165 P.3d 343 (2007), the court reviewed a policy containing an after-acquired-vehicle clause that extended coverage to new vehicles only until the thirty-first day after acquisition, thus requiring insureds to apply for a new policy to acquire coverage thereafter. ***See id.*** at 346–47. On the other hand, in ***Satterfield v. Erie Insurance Property and Casualty***, 217 W.Va. 474, 618 S.E.2d 483 (2005), the after-acquired-vehicle clause in the policy under review extended continuing automatic coverage, subject only to a condition subsequent of notice to the insurer concerning the purchase (and, presumably, payment of an additional premium). ***See id.*** at 485; ***accord Christensen v. Mountain West Farm Bureau Mut. Ins. Co.***, 303 Mont. 493, 22 P.3d 624, 629 (2000) (concluding that, "if other conditions of 'after acquired vehicle' coverage are met, coverage on newly acquired vehicles attaches at the time of acquisition and continues for the policy period unless the insured refuses to pay any additional premium which is requested"). ***See generally*** LEE R. RUSS, 8A COUCH ON INSURANCE § 117:25 (3d ed.2007) (characterizing continuing coverage under an after-acquired-vehicle clause upon notice of acquisition to the insurer as effecting "an extension [of coverage] beyond the initial automatic period"). To the degree that coverage under a particular after-acquired-vehicle provision continues in effect throughout the existing policy period, subject only to conditions subsequent such as notice and the payment of premiums, again, we clarify that ***Sackett I*** should not disturb the effect of an initial UM/UIM stacking waiver obtained in connection with a multi-vehicle policy. Again, our reasoning is that the term "purchase," as specially used in [Pa.C.S.A. §] 1738, does not subsume such adjustments to the scope of an existing policy containing such terms.

We hold that the extension of coverage under an after-acquired-vehicle provision to a vehicle added to a pre-existing multi-vehicle policy is not a new purchase of coverage for purposes of Section 1738(c), and thus, does not trigger an obligation on the part of the insurer to obtain new or supplemental UM/UIM stacking waivers. However, where coverage under an after-acquired-vehicle clause is expressly made finite by the terms of the policy, ***see***, ***e.g.***, ***Bird***, 165 P.3d at 346–47, ***Sackett I***

> controls and requires the execution of a new UM/UIM stacking waiver upon the expiration of the automatic coverage in order for the unstacked coverage option to continue in effect subsequent to such expiration.

Sackett II, at 333-34 (footnotes omitted).

The "after-acquired vehicle" clause at issue in this case provides as follows:

> 2. Coverage for a "newly acquired auto" is provided as described below. If you ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage we provide for a "newly acquired auto" will begin at the time you request the coverage.
>
> > a. For any coverage provided in this policy except Coverage for Damage To Your Auto, a "newly acquired auto" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage begins on the date you become the owner. However, for this coverage to apply to a "newly acquired auto" which is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 14 days after you become the owner.
> >
> > If a "newly acquired auto" replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without having to ask us to insure it.

Exhibits to the Amended Complaint, 12/10/10, Personal Auto Policy Definitions, at ¶2.a.

The unambiguous language employed in this provision clearly establishes that coverage under this clause began when Appellees became owners of their non-replacement vehicles and continued in effect indefinitely,

as long as Appellees asked Appellant to insure the vehicle within fourteen days. Thus, Appellees' purchases of their third and fourth vehicles did not disturb the effect of their initial waiver of UM coverage. This Court's decision in ***Sackett III*** does not alter this conclusion.

Unlike the "after-acquired vehicle" clause in this case, the Sacketts' "after-acquired vehicle" clause was finite. Coverage under the Sacketts' "after-acquired vehicle" clause only insured newly acquired, non-replacement vehicles for thirty days after their purchase. In order for the Sacketts to have continued insurance coverage on newly acquired, non-replacement vehicles, they had to insure such vehicles with their insurer or an affiliate. In other words, the Sacketts' policy did not allow newly acquired, non-replacement vehicles to remain indefinitely insured pursuant to the policy's "after-acquired vehicle" clause. Consequently, pursuant to ***Sackett I***, when the automatic coverage of the Sacketts' "after-aquired vehicle" clause expired, Insurer was required to have the Sacketts execute a new UM/UIM stacking waiver.

The Sacketts purchased their newly acquired vehicle, a Ford Windstar, on July 19, 2000. Mr. Sackett was injured in an automobile accident on August 5, 2000. Thus, the accident occurred within the thirty days that the Sacketts' original policy would have covered the Windstar. However, on July 26, 2000, *i.e.*, before the accident, Insurer added the Windstar to the Sacketts' policy *via* an Endorsement. The significance of the Endorsement in ***Sackett III*** was that the Endorsement established that the Windstar no longer was insured under the policy's "after-acquired vehicle" clause; rather,

at the time of the accident, the Windstar was insured under the general terms of the Sacketts' policy. The addition of the Windstar to the policy rendered the coverage under the "after-acquired vehicle" clause expired and, thus, triggered Insurer's duty to obtain from the Sacketts a newly signed waiver of UM/UIM coverage. Insurer failed to procure such a waiver; thus, Insurer was required to provide the Sacketts with stacked coverage.

The Endorsement and Amended Declarations Pages in this case do not carry the significance of the Endorsement and Amended Declarations Page in ***Sackett III***. The clear and unambiguous terms of the "after-acquired vehicle" clause in Appellees' policy establish that coverage under the clause was continuous and provided the same scope of insurance for Appellees' newly acquired vehicle as Appellees had for their previously insured vehicles. While the additions of Appellees' third and fourth vehicles to the policy were evidenced by an Endorsement and/or an Amended Declarations Page, Appellees already had signed a UM stacking waiver, and uninterrupted coverage was extended to their newly acquired vehicle pursuant to the "after-acquired vehicle" clause. Consequently, the additions of the newly acquired vehicles to Appellees' policy did not constitute purchases of coverage and, thus, did not trigger an obligation on Appellant's part to obtain from Appellees new or supplemental UM stacking waivers. Stated differently, the express language of the policy's "after-acquired vehicle" clause did not make coverage under that clause finite. Thus, coverage under that clause did not expire, and as I already have stated, Appellant was not required to get newly signed UM stacking waivers from Appellees.

For these reasons, I would find that the trial court erred by granting Appellees' motion for summary judgment and by denying Appellant's motion for summary judgment. Accordingly, I would reverse the court's order.