[J-119-2007]
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
v.	:	Court of Common Pleas of Westmoreland County entered November 20, 2003, at No. 5057 of 2002.
NATIONWIDE MUTUAL INSURANCE COMPANY,	:	
Appellee	:	RESUBMITTED: October 16, 2007

DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: DECEMBER 27, 2007**

I respectfully dissent.

I concur in the Majority's Opinion on Reargument to the extent that, going forward, it minimizes the damage caused by Sackett v. Nationwide Mut. Ins. Co., 919 A.2d 194 (2007) ("Sackett I"). I also agree with the Majority's discussion and holding to the extent it approves of the Insurance Commissioner's construction of Section 1738(c) of the Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa.C.S. § 1738(c). That construction essentially adopts my position in Dissent in Sackett I, and holds that the addition of a new vehicle to an existing multi-vehicle policy does not constitute a new "purchase" of uninsured/underinsured motorist (UM/UIM) coverage, that would require a new waiver of stacking. However, I would not limit that conclusion, as the Majority does, to the notice period afforded to an insured under a newly acquired vehicle provision in the insurance

policy. Nor would I afford appellants the windfall of stacking coverage they expressly rejected and for which they paid no premiums. As I stated in my Dissenting Opinion (joined by Mr. Justice Eakin) in Sackett I, "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." Id. at 205.

The Majority states that it is merely "clarifying" the holding in Sackett I. But the linchpin of the analysis in Sackett I, and a primary point of dispute in the competing opinions, concerned whether the addition of a new vehicle was a new "purchase" of insurance. The four-Justice Sackett I majority said "yes," Justice Eakin and I said "no" in dissent, and today's Majority also appears to say "no." This does more than "clarify" Sackett I.

The submissions on reargument provide strong, additional support for my dissenting position in Sackett I. Accordingly, with respect to the Court's failure to go further and recall the mandate in Sackett I, I continue to find myself in respectful dissent. The Majority states that the Court's interest in reargument is limited, *i.e.*, that it is focused only on the contention that Sackett I can be read as negating the effect of after-acquired vehicle clauses. Maj. Slip Op. at 5-6. The vote to grant reargument was 4-2, my vote was one of the necessary four, and my vote was not that limited. My interest in granting reargument was for this Court to revisit Sackett I in its entirety, while also taking into consideration the submission of the Insurance Commissioner and the response to that submission. The narrower issue today's Majority focuses on apparently was not raised in the lower courts or argued here, until the Insurance Commissioner remarked on the effect of Sackett I on those clauses. Certainly, the majority decision in Sackett I did not discuss the issue. The issue in Sackett I was simply whether a new waiver of stacking of UM/UIM coverage is required when an insured adds an additional vehicle to an existing multi-vehicle policy. I would retain that primary focus. On the merits, I would recall Sackett I and establish the plain

meaning approach set forth in my Dissenting Opinion in that case as the proper answer to this question of statutory construction. See Sackett I, 919 A.2d at 204-05 (Castille, joined by Eakin, J., dissenting).

Today's Court Majority does not engage the issue as posed in Sackett I. Proceeding from its narrower focus, the Majority does its best to make lemonade out of the lemon that is Sackett I. The Majority's focus allows these particular appellants to retain their windfall, but at the same time reduces the overall exposure of the automobile insurance industry. The Majority thus notes that, based upon decisions from other jurisdictions, there may be two types of after-acquired vehicle provisions in Pennsylvania automobile insurance policies, offering different durations of "automatic coverage." One type of coverage "afford[s] closed-term coverage solely during the reporting period" while the other type "contemplate[s] continuing coverage." The Majority suggests that a new rejection of stacking may be required "where coverage under an after-acquired-vehicle clause is expressly made finite by the terms of the policy." Maj. Slip Op. at 8-9. Thus, the scope of coverage, and the prospect of recovery for future litigants, will depend upon which type of provision is in the policy. We do not know the answer to that question in this case -- because it was not an issue until now -- and so appellants are awarded coverage by default, coverage for which they never paid.

I prefer the simpler route of recalling the automotive lemon that was Sackett I. Because I respectfully disagree with the narrow scope of review the Majority exercises on reargument, I continue to believe that the plain language of the MVFRL dictates the result urged in my original dissent: that no new waiver is required when a vehicle is added to an existing multi-vehicle policy, and the terms of the policy in effect at the time the additional vehicle is added remain the terms of the policy. Section 1738 contains no language requiring an additional waiver upon the purchase of an additional vehicle. 75 Pa.C.S. § 1738. Further, Section 1791 of the MVFRL specifically provides that an opportunity to

reject coverage must be given "**at the time of application for original coverage, and no other notice or rejection shall be required** . . . ." 75 Pa.C.S. § 1791 (emphasis supplied). In my view, this appeal remains one involving a simple issue of statutory construction that is easily resolved by resort to the MVFRL, specifically Sections 1738 and 1791. The plain language of those two Sections, as well as nearly two decades of Insurance Commissioner-approved industry practice, compels a conclusion that no new waiver of stacking is required when an insured adds an additional vehicle to an existing multi-vehicle policy. I would not alter the issue on appeal and make the result depend upon the language of an after-acquired vehicle provision.

I respectfully dissent.

Messrs. Justice Eakin and Fitzgerald join this dissenting opinion.