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## Case Bulletin: Insurance Law

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Pennsylvania Supreme Court determines that to waive stacked coverage when increasing the number of vehicles insured under policy that includes uninsured/underinsured coverage, the named insured must execute a new Section 1738 waiver.

Victor M. Sackett and Diana L. Sackett v. Nationwide Insurance Company  
Pennsylvania Supreme Court — 8WAP2006  
Opinion Dated April 17, 2007

On April 17, 2007, the Pennsylvania Supreme Court issued its opinion in Sackett v. Nationwide Mutual Insurance Co. The Court reversed the Superior Court's decision that the named insured's decision to waive stacked UM/UIM coverage at policy inception remained effective with respect to subsequently acquired vehicles. The Supreme Court ruled that the Pennsylvania Motor Vehicle Financial Responsibility Law requires motor vehicle insurers to provide first named insureds the opportunity to waive the stacked limits of UM/UIM coverage "for each instance that an insured purchases UM/UIM coverage by adding a vehicle to an existing policy." (Sackett slip opinion, p.1-2) "[W]hen a new car is added to an existing policy and UM/UIM coverage is purchased insurers must provide new Section 1738(d) stacking waivers in order to permit the insured to waive the increased amount of available stacked UM/UIM coverage." (Sackett slip opinion, p.3) If the named insured does not execute a stacking waiver form at the time a vehicle is added to a policy that includes UM or UIM coverage, then the limit of coverage available is the sum of the limits for each motor vehicle. The Court said, however, that "today's holding does not extend to circumstances where an existing named insured simply replaces a vehicle, or renews an existing policy". (Sackett slip opinion, p.14) It appears, then, that the trigger for the requirement that the named insured execute a new waiver of stacked coverage is the increase in the number of vehicles insured under the policy.

As the Court noted, the Superior Court ruled in Smith v. The Hartford Ins. Co., 849 A.2d 277 (Pa.Super.2004) that "a decision to waive all UIM coverage is presumptively effective throughout the life of the policy unless an affirmative change is made by an insured" (Sackett slip opinion, p.6). The Supreme Court notes that Smith has no binding effect on it, and distinguishes the case because Smith involved different sections of the MVFRL and did not involve stacking of UM/UIM coverage.