

Pennsylvania Association for Justice

BIG AUTO

Uninsured and Underinsured/Bad Faith

Philadelphia

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Qualifications (p. 565)

- “ Section 1702
- “ UM = unidentified (30 days police report and report to company so as not to prejudice), insolvent, OR no insurance AND arising out of operation, maintenance or use
- “ UIM = limits of all available coverage

Qualifications of Insured+

- ” Bole v. Erie Insurance (p. 566)
- ” Kaylor v. Donegal (p. 567)
- ” Barnes v. Keller (p. 567)
- ” Irving v. Progressive (p. 568)
- ” Vanderhoff v. Harleysville (p. 569)

Statute Of Limitations

- “ State Farm v. Rosenthal, 484 F.3d 251 (3d Cir. 2007)
- “ Hopkins. V. Erie Insurance Company, --- A.3d --- (Pa. Super. Ct. April 19, 2013)
(New Case - NOT IN MATERIALS)

Section 1731

- “ Mandates form
- “ Can be on same page
- “ Must %specifically comply+but not hyper-technicality (Vaxmonsky)
- “ Applies through entire policy

” Jones v. Unitrin

” Robinson v. Travelers (p. 574)

” Glazer v. Nationwide (p. 575)



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Section 1734

Written Request for Lower Limits

- “ Does not contain specific form
- “ A Named Insured
- “ Applies throughout entire lifetime of policy
- “ Check the policy history
- “ Must be executed by someone with authority
- “ Can be application



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Is Application Good Enough?

Orsag v. Farmers says YES!

(March 2011)

Orsag Issue

- ➔ If an insured signs an insurance application that contains lowered uninsured/underinsured motorist coverage limits, is that signature alone sufficient to meet the requirements of Section 1734 of Pennsylvania's Motor Vehicle Financial Responsibility Law?

Limitations of Orsag

- ” Still must be a writing by insured.
- ” Still must be authorized signature (Erie Ins. v. Holt)
- ” Weilacher v. State Farm (April 25, 2013) (supp.)

Other 1734 Case

➔ Olender v. National Cas. (p. 576)

” Ambiguous form

Section 1738

Rejection of Stacking

Sackett . I, II, or III

” Bumbarger v. Peerless (p. 580)

” Grudkowski v. Foremost (p. 581)



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- “ Applies throughout unless you add a car, then may not apply
- “ Applies if delete a car
- “ Applies if replace a car
- “ %first named insured+must sign
- “ Applies to corporate but not fleet policy

Household/Family Car Exclusion

Erie v. Baker Issue

➔ Whether section 1738(a) of the MVFRL precludes the application of the so-called household exclusion to prevent inter-policy UIM stacking when there has been no valid waiver of stacking by the insured?

Erie v. Baker

- “ Operating motorcycle insured with Universal for 15K UIM
- “ Second level is household for 100K UIM with Stacking but contains exclusion.
- “ Plurality decision 4 (3-1) . 3 says does not violate stacking.

Household

- ➔ Baker. Supreme Court heard oral argument in September 2008.
- ➔ Ayers. (same company in entire house)
 - ” Petition for Allowance filed and then HELD pending decision in Baker.

Geico v. Ayers (p. 584)

Argued April 12, 2011

Decided April 28, 2011

Ayers Issue

➔ Does the application of a household exclusion violate Section 1738 of the Motor Vehicle Financial Responsibility Law (MVFRL), where the same insurance company insures all vehicles owned by an insured, and, where the exclusion denies inter-policy stacking to the insured who has paid for stacking and has not executed a stacking waiver?

Justice Saylor Opinion In Support Of Affirmance

¶ I would disapprove the utilization by an insurer of separate policies pertaining to multiple vehicles within the same household solely to subvert intra-policy stacking without any risk-based justification. Nevertheless I am persuaded that the writing of separate policies, and enforcement of the household exclusion, is justified relative to motorcycle insurance coverage.+

Breakdown of Baker/Ayers

Baker

Castille Baer
Eakin Todd
Greenspan McCaffery
Saylor Concur***

Ayers

Castille Baer
Eakin Todd
Saylor** McCaffery
Orie-Melvin (NP)

Result Of Stacking with Split Car Policies????

Invalidate

Baer

Todd

McCaffery

Saylor

Validate

Castille

Eakin

Orie-Melvin

Regular Use - Williams

➔ Whether, under the MVFRL and the decision in Burstein v. Prudential Prop. & Cas. Ins. Co., 809 A.2d 204 (Pa. 2002), the %regular use+exclusion to underinsured motorist coverage in an automobile insurance policy is valid where the insured is a police officer, who has sustained bodily injury in the course of performing his duties while driving a police vehicle for which vehicle he could not have obtained underinsured motorist coverage?

Regular Use

- ➔ Williams v. GEICO (p. 585)
- ➔ Progressive Preferred Ins. Co. v. Kalmanowicz (p. 587)

WorkersqComp Exclusion

➔ Heller v. Penn. League (p. 588)

Heller Issue

➔ Whether or not the Honorable Court should strike down an exclusion in [Respondents] policy providing that any person receiving workers compensation benefits was ineligible for UM/UIM benefits?

Co-Employee

➔ Erie Insurance v. Conley (p. 589)

Setoffs (p. 591)

Pusl v. Means (CASE IS DEAD!)

- ” Settled UIM first for 75K.
- ” BI limits are 100K.
- ” Goes to trial and verdict of 100K.
- ” Trial court molds verdict to 25K.
- ” Reargument en banc Smith v. Rohrbach April 17, 2012

Points of Pusl

- “ Subrogation assumed waived in case.
- “ Not joint filing with UIM carrier.
- “ Do you seek an assignment?
- “ Do you cut a deal with the UIM carrier?
- “ If verdict goes south and you have an assignment then global release?
- “ Can it be applied retroactively?



Sample Pusl Assignment

ASSIGNMENT OF RIGHTS AGREEMENT

----- and ----- (hereinafter "Claimants") and ----- Insurance Company (hereinafter Defendant") each being represented by an attorney of their choosing have engaged in arms length negotiations and settlement discussions regarding the settlement of Claimant's claim for UIM benefits under ----- policy #12345678, #12345678, issued to ----- and ----- arising out of a motor vehicle accident which occurred on -----.

Now, therefore it is acknowledged by Claimants that Defendant has previously paid the Claimants \$50,000, to settle their claim for underinsured motorist's benefits arising out of said accident, receipt of which is hereby acknowledged. In addition, Claimants agree to pay Defendant \$1,000 for assignment of its right of subrogation under said policy in connection with the Claimants' pending third party action filed against ----- in the ----- County Court of Common Pleas No. ----- of 0000, regarding the injuries which were sustained in the automobile accident of ----- and which were the subject of the underinsured motorist claim. It is expressly understood that this amount shall be immediately paid to the Defendant, regardless of the outcome of any present or future litigation by Claimants against ----- .

Further it is understood that, by this agreement, Defendant does not intend to release or discharge its subrogation claim, but rather to transfer to Claimant its right of subrogation or reimbursement against any award or settlement in favor of the Claimants in [complete caption of action].

BY: _____

-

BY: _____ Insurance Company

Smith v. Rohrbaugh (p. 594)

➡ UM/UIM are not first party . Petition for Allowance Of Appeal Denied On April 9, 2013.

Jurisdiction

➔ Purcell v. State Farm (p. 563)

Only Dec Action will probably remand or decline jurisdiction.

Evidentiary Auto Issues

- ➔ Corbin v. Khosla (p. 595)
- ➔ Kansky v. Snowman
- ➔ Marlette v. State Farm (p. 597)



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Bad Faith Issues (p. 607)

➔ Clark v. Progressive (supp.)

➔ Tubman v. USAA (supp.)



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The End

See Ya
Next Year!

