

JOHN M. PERGOLESE AND PEGGY
DOUG PERGOLESE,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

THE STANDARD FIRE INSURANCE
CO., ONE OF THE TRAVELERS
INSURANCE COMPANIES D/B/A
TRAVELERS PROPERTY CASUALTY
AND TRAVELERS GROUP,

APPEAL OF: THE STANDARD FIRE
INSURANCE CO.,

No. 1467 EDA 2014

Appeal from the Judgment Entered April 11, 2014
in the Court of Common Pleas of Montgomery County
Civil Division at No. 10-36947

BEFORE: FORD ELLIOTT, P.J.E., STABILE, and STRASSBURGER,* JJ.

CONCURRING OPINION BY STRASSBURGER, J.: **FILED APRIL 11, 2017**

I join the Majority opinion.

The **Sackett** trilogy and **Bumbarger** compel the result that a new stacking waiver is required whenever a vehicle is added to a policy.

If I were writing on a *tabula rasa*, I would limit the requirement of a new stacking waiver to the addition of a vehicle to a single vehicle policy. When the one-car policy was originally purchased, there was likely nothing to stack because there was only one vehicle, and no reason for the policyholder to pay for stacking coverage that did him or her no good. When a second vehicle is added, that is usually the first time that the policyholder

* Retired Senior Judge assigned to the Superior Court.

has to decide whether he or she wants stacking. Then it makes sense to require the insurer to provide a stacking waiver.

On the other hand, where a vehicle is added to a multi-vehicle policy, there is no reason to believe that a policyholder who has already rejected stacking, with its higher premium, would suddenly have a change of heart and want stacking. In that situation, the one we have here, it does not make sense to require a new waiver of stacking.

Nonetheless, the case law is what it is, and the Majority parses it correctly in my view, and thus I join.¹

¹ The insurance industry has no one to blame for this result other than itself. The industry writes the policies and could correct its problems.