2013 PA Super 47

HELEN M. BUMBARGER AND RONALD C. BUMBARGER, HER HUSBAND Appellees v. PEERLESS INDEMNITY INSURANCE COMPANY Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA 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(s): No. 2010-1563-CD

HELEN M. BUMBARGER AND RONALD C. BUMBARGER, HER HUSBAND Appellee v. PEERLESS INDEMNITY INSURANCE COMPANY Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA 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, J., WECHT, J., and COLVILLE, J.*

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* Retired Senior Judge assigned to the Superior Court.

OPINION BY WECHT, J.: Filed: March 8, 2013

At Docket No. 354 WDA 2012, Peerless Indemnity Insurance Company ("Appellant") challenges the trial court's February 3, 2012 order. That order granted summary judgment in favor of Helen M. and Ronald C. Bumbarger ("Appellees") on their claim for uninsured motorist ("UM") coverage. We affirm,[1] albeit on a basis somewhat different than that relied upon by the trial court.[2]

The background underlying this matter can be summarized as follows: Appellees filed a complaint, and then an amended complaint, against Appellant for breach of the parties' auto insurance contract. According to the amended complaint, on December 3, 2009, Appellee Helen Bumbarger was a passenger in Appellees' 1998 Ford Taurus when Michael Jury caused

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[1] At Docket No. 569 WDA 2012, Appellant appeals separately from the judgment that the trial court purported to enter in favor of Appellees on March 19, 2012. When the court entered that judgment, the matter already was on appeal to this Court at 354 WDA 2012. Hence, the trial court lacked jurisdiction to proceed further in this matter. Pa.R.A.P. 1701(a). Consequently, the entry of judgment challenged at 569 WDA 2012 is a legal nullity. ***See Bell v. Kater***, 839 A.2d 356, 358 (Pa. Super. 2003) ("The trial court's order . . . is a nullity because it was entered at a time when the trial court did not have jurisdiction – *i.e.*, the order was entered **after** Kater filed her first notice of appeal with this Court and **before** the record was remanded to the trial court pursuant to Pa.R.A.P. 2591(a).") (emphasis in original). Accordingly, we dismiss the appeal docketed at No. 569 WDA 2012.

[2] ***See In re Jacobs***, 15 A.3d 509, 509 & n.1 (Pa. Super. 2011) ("We are not bound by the rationale of the trial court, and may affirm on any basis.").

his vehicle to collide with Appellees' car. As a result of the accident, Mrs. Bumbarger suffered serious injuries. Mr. Jury was an uninsured motorist.

Appellees further averred that they insured their Taurus by purchasing a policy from Appellant. At the time that Appellees purchased the policy, they owned two vehicles, but elected to waive their ability to stack UM coverage.[3] Appellees later purchased an additional vehicle, and, through

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[3] Stacking is explained by Pennsylvania's Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa.C.S. §§ 1701, *et seq.*, in section 1738 ("Stacking of uninsured and underinsured benefits and option to waive") as follows:

> **(a) Limit for each vehicle.—**When more than one vehicle is insured under one or more policies providing uninsured or underinsured motorist coverage, the stated limit for uninsured or underinsured coverage shall apply separately to each vehicle so insured. The limits of coverages available under this subchapter for an insured shall be the sum of the limits for each motor vehicle as to which the injured person is an insured.
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> **(b) Waiver.—**Notwithstanding the provisions of subsection (a), a named insured may waive coverage providing stacking of uninsured or underinsured coverages in which case the limits of coverage available under the policy for an insured shall be the stated limits for the motor vehicle as to which the injured person is an insured.
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> **(c) More than one vehicle.—**Each named insured purchasing uninsured or underinsured motorist coverage for more than one vehicle under a policy shall be provided the opportunity to waive the stacked limits of coverage and instead purchase coverage as described in subsection (b). The premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

(Footnote Continued Next Page)

their insurance agent, added that third vehicle to the policy via an endorsement with an effective date of July 24, 2007. Over two years after that endorsement, Appellees added a fourth vehicle to their policy. The addition of the fourth vehicle was reflected in an Amended Declarations Page that became effective on October 2, 2009. Unlike the third car, the fourth was not added to the policy by endorsement.

With regard to the December 3, 2009 accident, Appellees maintained that they were entitled to stack UM coverage because Appellant failed to procure new stacking waivers after Appellees purchased their third and fourth vehicles. Appellees contended that Appellant was required to obtain new stacking waivers pursuant to our Supreme Court's decisions in ***Sackett v. Nationwide Mutual Insurance Co.***, 919 A.2d 194 (Pa. 2007) ("***Sackett I***"), and ***Sackett v. Nationwide Mutual Insurance Co.***, 940 A.2d 329 (Pa. 2007) ("***Sackett II***"), as well as this Court's decision on appeal following the remand to the trial court of ***Sackett II***. ***See Sackett v. Nationwide Mutual Insurance Co.***, 4 A.3d 637 (Pa. Super. 2010) ("***Sackett III***"). Appellees claimed that Appellant breached the policy by refusing to stack their UM coverage.

The parties filed a stipulation of facts and competing motions for summary judgment. On February 3, 2012, the trial court issued an opinion

(Footnote Continued) ———————————

75 Pa.C.S. § 1738. Subsection 1738(d) prescribes a precisely worded form to memorialize an insured's election to waive stacked coverage.

and order denying Appellant's motion for summary judgment and granting Appellees' motion for summary judgment. In its order, the court also declared that, pursuant to the insurance policy, Appellant is required to provide Appellees with $100,000.00 of stacked UM coverage. The trial court's ruling dismissed all claims and all parties and, thus, constituted a final, appealable order. Pa.R.A.P. 341(b)(1). On March 2, 2012, Appellant timely filed a notice of appeal. The appeal is docketed in this Court at No. 354 WDA 2012, and is the only one of the two docketed appeals arising in this case that we may review. ***See*** *supra* at 2 n.1.[4]

On March 6, 2012, the trial court directed Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On March 13, 2012, the parties filed a document entitled "Stipulation on the Determination of Damages." The parties stipulated that, because Appellant already provided Appellees with $25,000 in coverage, the limit of unstacked UM coverage under the policy, the damages due to Appellees would be the $75,000 difference between $25,000 (unstacked) and $100,000 (stacked) if this Court affirmed the February 3, 2012, order. On April 16, 2012, Appellant filed its Rule 1925(b) statement.

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[4] On March 30, 2012, Appellant filed its second notice of appeal, purportedly on the judgment entered during the pendency of its previously filed appeal. As noted, *supra* n.1, we dismiss this appeal.

Appellant asks us to review the trial court's decision granting summary judgment to Appellees and denying it to Appellant. Specifically, Appellant poses the following issue:

> Did the lower court improperly grant [Appellees'] motion for summary judgment, and deny the motion for summary judgment by [Appellant], where the Appellees' original stacking waiver remained in effect as of the date of loss, notwithstanding the addition of two (2) other vehicles to the policy, where an effective stacking rejection form had been signed at the policy's inception, and where the vehicles were added pursuant to an after-acquired vehicle clause that provided for continuing, and not finite, coverage?

Brief for Appellant at 4 (capitalization modified).

Our standard of review of an appeal from a grant or denial of summary judgment is well-settled:

> When a party seeks summary judgment, a court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Finally, the court may grant summary judgment only when the right to such a judgment is clear and free from doubt. An appellate court may reverse the granting of a motion for summary judgment [only] if there has been an error of law or an abuse of discretion. . . .

Swords v. Harleysville Ins. Co., 883 A.2d 562, 566-67 (Pa. 2005) (citations omitted).

To adjudicate this appeal, we must interpret Appellees' automobile insurance policy. We note the following governing principles:

> The task of interpreting [an insurance] contract is generally performed by a court rather than by a jury. The purpose of that task is to ascertain the intent of the parties as manifested by the terms used in the written insurance policy. When the language of the policy is clear and unambiguous, a court is required to give effect to that language. When a provision in a policy is ambiguous, however, the policy is to be construed in favor of the insured to further the contract's prime purpose of indemnification and against the insurer, as the insurer drafts the policy, and controls coverage. Contractual language is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. Finally, [i]n determining what the parties intended by their contract, the law must look to what they clearly expressed. Courts in interpreting a contract, do not assume that its language was chosen carelessly. Thus, we will not consider merely individual terms utilized in the insurance contract, but the entire insurance provision to ascertain the intent of the parties.
>
> In other words, [g]enerally, courts must give plain meaning to a clear and unambiguous contract provision unless to do so would be contrary to a clearly expressed public policy.

Gov't Employees Ins. Co. v. Ayers, 955 A.2d 1025, 1028-29 (Pa. Super. 2008) (citations and quotation marks omitted); ***see also Madison Constr. Co. v. Harleysville Mut. Ins. Co.***, 735 A.2d 100, 106 (Pa. 1999) ("Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement . . . . Contractual language is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense."). To the extent that our analysis requires us to

resolve a question of law, we do so *de novo*. ***Generette v. Donegal Mut. Ins. Co.***, 957 A.2d 1180, 1189 (Pa. 2008).

We have long observed the following overarching principle:

> [I]n the context of underinsurance coverage, this court reaffirmed that one of the objects of the [Motor Vehicle Financial Responsibility Law ("MVFRL")] was to afford:
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> > the injured claimant the greatest possible coverage. ***Danko v. Erie Ins. Exch.***, 630 A.2d 1219 (Pa. Super. 1993), *affirmed*, 649 A.2d 935 (Pa. 1994); ***Sturkie v. Erie Ins. Grp.***, 595 A.2d 152 (Pa. Super. 1991); ***Lambert v. McClure***, 595 A.2d 629 (Pa. Super. 1991). In close or doubtful cases, we must interpret the intent of the legislature and the language of insurance policies to favor coverage for the insured. ***Danko***, *supra*; ***Lambert***, *supra*.
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> ***Motorists Ins. Co. v. Emig***, 664 A.2d 559, 566 (Pa. Super. 1995).

Allwein v. Donegal Mut. Ins. Co., 671 A.2d 744, 750-51 (Pa. Super. 1996).

We note as well that our Supreme Court has articulated a competing objective of the MVFRL:

> The repeal of the No-Fault Act and the enactment of the MVFRL reflected a legislative concern for the spira[l]ing consumer cost of automobile insurance and the resultant increase in the number of uninsured motorists driving on public highways. The legislative concern for the increasing cost of insurance is the public policy that is to be advanced by statutory interpretation of the MVFRL. This reflects the General Assembly's departure from the principle of "maximum feasible restoration" embodied in the now defunct No-Fault Act.

Burstein v. Prudential Prop. & Cas. Ins. Co., 809 A.2d 204, 207 (Pa. 2007) (quoting ***Paylor v. Hartford Ins. Co.***, 640 A.2d 1234, 1235 (Pa. 1994)) (footnote omitted; modification omitted). With regard to cost-containment, our Supreme Court has explained that the MVFRL seeks "to protect insureds against forced underwriting of unknown risks that insureds have neither disclosed nor paid to insure, and prevents insureds from receiving gratis coverage. Thus, insurers are not compelled to subsidize unknown and uncompensated risks by increasing insurance rates comprehensively." ***Craley v. State Farm Fire & Cas. Co.***, 895 A.2d 530, 542 (Pa. 2006) (internal quotation marks and citations omitted). Where the ***Craley*** considerations – *i.e.*, *gratis* coverage for unknown risks – are not implicated, our decision is driven by general principles of statutory construction and contract interpretation. ***See Sackett I***, 919 A.2d at 427-28.

The disposition of this appeal requires us to apply the ***Sackett*** line of cases to the novel question presented by the peculiar language of the policy at bar. Because the parties' arguments are more readily understood within the context of the ***Sackett*** decisions, we review those precedents before addressing the parties' arguments.

In ***Sackett III***, this Court stated, in relevant part, as follows:

> This case comes to us following instructive disposition from our Supreme Court [in ***Sacketts I & II***] and subsequent remand to the trial court. On remand, the trial court conducted a non-jury trial, and[,] on December 15, 2008, declared that the Sacketts could stack underinsured motorist ("UIM") benefits under

Appellant's policy for a total of $300,000 – $100,000 for each of the Sacketts' three vehicles. [Insurer] filed post-trial motions on December 22, 2008, which the trial court denied on May 14, 2009. The Sacketts then entered judgment in their favor on May 19, 2009. This timely appeal ensued.

The facts of record indicate that on August 5, 1998, [Insurer] issued an automobile insurance policy to the Sacketts, insuring two vehicles, a Chevrolet Lumina and a Chevrolet Malibu. On that same date, Victor M. Sackett executed a valid waiver declining to stack UIM coverage on these two vehicles. On July 19, 2000, the Sacketts purchased a third vehicle, a Ford Windstar. The Sacketts notified [Insurer's] agent that they purchased a new vehicle and requested coverage identical to the Chevrolet Lumina and Malibu. On July 26, 2000, [Insurer] issued a corrected declarations/endorsement page adding the Ford Windstar to the Sacketts' existing policy. [Insurer], however, did not offer or obtain a new stacking waiver signed by the Sacketts stating that they declined to stack UIM benefits for the Ford Windstar. On August 5, 2000, Victor M. Sackett was injured in an automobile accident while he was a passenger in another person's vehicle. The Sacketts filed the instant declaratory judgment action, asserting that [Insurer] owed them stacked UIM coverage.[1]

[1] "The basic concept of stacking is the ability to add the coverages available from different vehicles and/or different polices to provide a greater amount of coverage available under any one vehicle or policy."

The issue in this appeal is whether [Insurer] had a duty to provide stacked UIM motorist coverage to the Sacketts when they added the Ford Windstar to their existing policy through an endorsement. More precisely, the issue is whether [Insurer] had to obtain a new waiver from the Sacketts, stating that they declined to stack UIM benefits as a result of the Sacketts' purchase of the Ford Windstar, in order to effectively deny the Sacketts the right to stack UIM benefits. We hold that once the Sacketts added the Ford Windstar to their policy through an endorsement, [Insurer] had to secure a new waiver in order to prohibit the Sacketts from stacking UIM benefits. Because [Insurer] failed to obtain such a waiver, the Sacketts were entitled to stack UIM benefits as a matter of law.

* * * *

> Our disposition is guided by two cases decided by our Supreme Court involving the same parties. In [***Sackett I***], our Supreme Court held that when an insured previously waived stacked coverage by executing a valid waiver form, upon the addition of a new vehicle to a multi-vehicle policy, the insurer must secure another signed waiver form declining stacked coverage on that new vehicle. If the insurer does not obtain a newly-signed waiver from the insured, then coverage will be deemed to have stacked on the added vehicle as a matter of statutory law. "[The Motor Vehicle Financial Responsibility Law] makes it clear that an insurer must provide a stacking waiver each time a new vehicle is added to the policy because the amount of coverage that may be stacked increases."
>
> Subsequently, our Supreme Court[, in ***Sackett II***,] modified its holding in ***Sackett I***. In that case, the Supreme Court considered the effect of ***Sackett I*** on "after-acquired vehicle clauses," which are contractual provisions that explicitly permit an insurer to extend existing policy coverage (finite or continuing) to new or substitute vehicles. The Court held that despite ***Sackett I***, if an insurer extends coverage to an insured's new vehicle on a pre-existing policy pursuant to an after-acquired vehicle clause, then the insurer does not have to obtain a new stacking waiver from the insured. "However, where coverage under an after-acquired-vehicle clause is expressly made finite by the terms of the policy, ***Sackett I*** controls and requires the execution of a new UM/UIM stacking waiver upon the expiration of the automatic coverage[.]" Apart from the minor modification enunciated in ***Sackett II***, the Supreme Court left the holding of ***Sackett I*** undisturbed.
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> Therefore, under ***Sackett I***, an insurer must obtain a new signed stacking waiver from the insured when the insured adds a new vehicle to an existing policy, unless the insured already signed a stacking waiver and the insurer, pursuant to ***Sackett II***, added the new vehicle under an after-acquired vehicle clause.
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> In this case, at the time of the accident, the Sacketts' Ford Windstar was not covered on the original policy pursuant to an after-acquired vehicle clause. The record reveals that the relevant after-acquired vehicle clause in the existing policy was strictly a default measure, applying only in the event that the Sacketts "did not have other collectible insurance."[2] However, prior to the accident, the Sacketts added coverage for the Ford

Windstar on their existing policy through an endorsement. The Sacketts, therefore, obtained "collectable insurance" on the Ford Windstar that was independent of the automatic coverage offered in the after-acquired vehicle clause.[3] Consequently, when the Sacketts purchased coverage for the Ford Windstar pursuant to an endorsement, the after-acquired vehicle clause in the policy was rendered inapplicable in accordance with its plain language. In short, after the Sacketts added the Ford Windstar to the policy by way of an endorsement, the Ford Windstar was covered under the general terms of the policy and not its after-acquired vehicle clause.

[2] In pertinent part, the after-acquired vehicle clause states:

> ***Coverage Extensions***
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> * * *
>
> **USE OF OTHER MOTOR VEHICLES**
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> This coverage also applies to certain other **motor vehicles** as follows:
>
> * * *
>
> 2. a four-wheel motor vehicle acquired by you. This coverage applies only during the first 30 days you own the vehicle unless it replaces your auto. If the newly acquired vehicle does not replace your auto, all household vehicles owned by you must be insured by us or an affiliate for this extension of coverage to apply.
>
> We provide this coverage only if you do not have other collectable insurance. You must pay any added premium resulting from this coverage extension.

[3] Significantly, [Insurer] concedes this point in its brief: "Coverage in the instant case was added by an endorsement and not pursuant to any newly acquired vehicle clause."

Because the Sacketts added the Ford Windstar to the policy prior to the accident, [Insurer] was obligated under ***Sackett I*** to obtain a new waiver from the Sacketts declining stacked coverage. With the addition of the Ford Windstar to the existing

> policy, [Insurer] did not offer or obtain a stacking waiver from the Sacketts. Therefore, under ***Sackett I***, the Sacketts were entitled to stack UIM coverage as a matter of law.
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> [Insurer], nonetheless, suggests in the alternative that its after-acquired vehicle clause was continuous in nature, and thus, a new stacking waiver was unnecessary. [Insurer] compares its after-acquired vehicle clause to the open-ended, after-acquired vehicle clause referenced in ***Sackett II*** and analyzed in ***Satterfield v. Erie Insurance Property and Casualty***, 217 W.Va. 474, 618 S.E.2d 483 (2005).
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> In ***Satterfield***, the after-acquired clause was indefinite and extended continuous coverage on a new vehicle without any contractual language limiting that coverage. Contrary to [Insurer's] position and the after-acquired vehicle clause in ***Satterfield***, the after-acquired vehicle clause in this case expressly terminated coverage for new vehicles when the insured obtained "other collectable insurance." As previously explained, the Sacketts added coverage for the Ford Windstar through an endorsement, and this "other collectable insurance" nullified any coverage that the Sacketts may have had under [Insurer] after-acquired vehicle clause. Moreover, unlike the after-acquired vehicle clause in ***Satterfield***, the after-acquired vehicle clause in this case was inherently finite, providing "coverage . . . only during the first 30 days" an insured acquires a new vehicle. Accordingly, [Insurer's] analogical reference to the after-acquired vehicle clause in ***Satterfield*** is unavailing.

Sackett III, 4 A.3d at 638-42 (citations omitted). Accordingly, this Court affirmed the trial court's ruling that the insured was entitled to the stacking of his UIM coverage.

As we review the governing case law before taking up the specific facts of this case, we observe that our decision in ***Sackett III*** appeared to rely on some combination of three different aspects of the policy and the facts before us in that case. However, arguably any one of these bases was sufficient by itself to carry the ruling. First, we indicated that the unqualified

30-day limitation imposed on coverage under the clause rendered it "finite" within the meaning set forth in ***Sackett II***, thus requiring the insurer to seek a new stacking waiver form. ***Id.*** at 641. Second, we asserted that the coverage for the new vehicle as embodied by the endorsement constituted "other collectable insurance." ***Id.*** at 640. Because the newly-acquired vehicle clause expressly applied only for so long as there was no other collectable insurance on the vehicle, we ruled that this, too, rendered the clause "finite" under ***Sackett II***, with the same result that stacking would apply under section 1738 of the MVFRL, absent a new waiver. ***Id.*** Finally, and viewed in the alternative, in defining the addition of the new vehicle to the extant policy by endorsement as a "purchase" of insurance under section 1738, we arguably rendered moot that policy's "other collectable insurance" clause; if the addition of the vehicle to the policy by endorsement without more reflected the purchase of new insurance, then, under ***Sackett I*** and ***II*** a new waiver would be required without regard to the effect of the "other collectable insurance" clause of the newly-acquired vehicle provision.

Consistently with the latter view, the trial court in the instant case appeared to adopt the position that, under ***Sackett III***, the addition of the vehicle by endorsement alone constituted the purchase of new insurance under section 1738, thus requiring stacked coverage absent a new waiver of

same. We need not reach this question today, because our analysis and disposition in this particular case hinges on another issue.[5]

We turn now to the case before us. The parties stipulated to the following relevant facts. When Appellees purchased their multi-vehicle automobile insurance policy from Appellant, Appellees validly waived stacked UM coverage. Under the policy, coverage of newly-acquired vehicles was governed by the following clause:

> 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.
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> > 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 45 days after you become the owner.

Exhibit to Amended Complaint, 12/10/2010, Personal Auto Policy Definitions ("Auto Policy Definitions") at 1, ¶K.2.a , as modified by Special Provisions Endorsement.[6]

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[5] This Court does not issue advisory opinions on issues that need not be resolved to dispose of the case at bar. ***See Okkerse v. Howe***, 556 A.2d 827, 833 (Pa. 1989).

[6] The endorsement quoted modified subparagraph a., not the introductory language of paragraph 2. The modification affected only the

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Appellees later purchased two additional vehicles. Appellees promptly notified their insurance agent of each of these purchases and requested that the vehicles be added to their multi-vehicle automobile insurance policy. After Appellees made such a request following the purchase of their third vehicle, Appellant issued an Amended Declarations Page, and Appellees' insurance agent prepared a new Endorsement Summary including that third vehicle. After Appellees made such a request following the purchase of their fourth vehicle, Appellant issued another Amended Declarations Page, but did not issue a new endorsement. Appellant did not require Appellees to sign new waivers of stacked UM coverage after Appellees purchased their third and fourth vehicles.

The trial court interpreted our decision in ***Sackett III*** as hinging on the fact that the insureds' vehicle no longer was insured under the newly-acquired vehicle clause because it was added by endorsement. The trial court concluded, essentially, that we disposed of ***Sackett III*** based upon the endorsement alone. Trial Court Opinion ("T.C.O."), 2/3/2012, at 6 (citing ***Sackett III***, 4 A.3d at 640-41). On that basis, the trial court ruled that ***Sackett III*** mandated that Appellant was required to obtain a new UM stacking waiver from Appellees.[7] Because Appellant failed to do so, the

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period allowed for notice, which it changed from fourteen days to forty-five days.

[7] Appellees maintain that, because the third car was added by endorsement, and because Appellant failed at that time to seek a new

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court concluded that the third and fourth vehicles were not insured under the policy's newly-acquired vehicle clause, and Appellee thus was entitled to stacked UM coverage as a matter of law. T.C.O. at 7-9.

Appellant argues that this case is distinguishable from ***Sackett III***. Appellant maintains that Appellees' policy's newly-acquired vehicle clause continuously insured Appellees' third and fourth vehicles, provided that Appellees informed Appellant of the purchase of the vehicles within forty-five days. Brief for Appellant at 18, 20-23. Appellant further maintains that the Endorsement that followed the purchase of Appellees' third vehicle and the Amended Declarations Pages that followed the purchase of Appellees' fourth vehicle simply documented an event that already had occurred – namely, the automatic expansion of the policy's coverage to include the newly-acquired vehicles from the dates of their purchases. ***Id.*** at 20. Appellant argues that, because Appellees' vehicles were continuously insured by the policy's newly-acquired vehicle clause, under ***Sackett II***, Appellant was not

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stacking waiver, the addition of the fourth car is immaterial, regardless of the fact that the addition of the fourth vehicle was reflected only in revised declarations rather than by endorsement. Brief for Appellees at 19. We agree. If Appellant failed to reaffirm Appellees' waiver of stacking following the addition of the third car, the failure to do so following the purchase of the fourth car is immaterial, as the original stacking waiver already had been made ineffective following the addition of the third vehicle. Conversely, because the asserted basis for waiver as to each is materially the same, if Appellant was not obligated to seek a new stacking waiver in connection with the addition to the policy of the third car, then *a fortiori* it was not required to do so in connection with the fourth.

required to obtain new UM stacking waivers from Appellees. Rather, the original stacked UM waiver signed by Appellees remained in effect at the time of Appellees' accident. Thus, asserts Appellant, the trial court erred by requiring Appellant to provide stacked UM coverage to Appellees.

At the outset, we dispense with certain more nebulous lines of argument pressed by Appellant. For example, we find unavailing Appellant's oft-repeated claim that the endorsement reflecting the addition of Appellees' third vehicle to the policy simply documented something that already had occurred. The fact that a given change precedes its formal documentation seems to us a given in most automobile insurance transactions, inasmuch as the documentation of policy changes tends not to materialize precisely at the moment of a given change to the policy. We presume that this also was true of the endorsement that we relied upon in our ruling in ***Sackett III***, rendering that factor, by itself, immaterial to our analysis of that case. We recognize that Appellant's argument in this regard, in some sense, simply is a necessary premise of its contention that Appellees' third car was already and indefinitely insured under the newly-acquired vehicle clause when the endorsement issued, and that the endorsement merely reflected that indefinite coverage under the clause. But this does not make the premise itself a central consideration.

We also find unpersuasive Appellant's argument that the trial court entirely declined to interpret the language of the insurance policy in reaching its disposition, which Appellant argues is inconsistent with the emphasis

placed on the policy language by the ***Sackett*** decisions. We do not read the trial court as having done so. To the contrary, the trial court expressly relied on the policy's language in analogizing this case to ***Sackett III***:

> Here, coverage for the [third vehicle] was added pursuant to an endorsement, just as in [***Sackett III***]. An endorsement indicates a change to the original terms of the policy. This endorsement added the vehicle to the Policy's declarations. By the Policy's terms, newly acquired vehicle coverage was for those vehicles owned by [Appellees] but not shown in the Declarations.

T.C.O. at 8. That its reference to the policy language was brief appears to be a product of how straightforward the trial court believed that language to be, relative to the holding in ***Sackett III***. Whether the trial court was correct to be so succinct is immaterial to the fact that the court did address the policy language.

However, even had the trial court omitted directly to interpret the language of the clause itself, it would not clearly have been at odds with our ruling in ***Sackett III***. As discussed *supra*, ***Sackett III*** reasonably can be interpreted as finding the addition of a newly acquired vehicle to the policy by endorsement sufficient, by itself, to establish a purchase of insurance under section 1738 without specific reference to the policy language. However, it also is true that, in ***Sackett III***, we linked the effect of the endorsement with the "other collectable insurance" clause of the newly-acquired vehicle provision, as follows:

> [P]rior to the accident, the Sacketts added coverage for the [newly-acquired vehicle] on the existing policy through an

> endorsement. The Sacketts, therefore, obtained 'collectable insurance' on the [vehicle] that was independent of the automatic coverage offered in the after-acquired vehicle clause. Consequently, when the Sacketts purchased coverage for the [vehicle] pursuant to an endorsement, the after-acquired vehicle clause in the policy was rendered inapplicable in accordance with its plain language.

4 A.3d at 640. For the reasons alluded to above, and set forth below, we need not parse this issue further in order to resolve the case at bar.

Appellant's most salient argument is that ***Sackett III*** is distinguishable because the policy language in that case differed in dispositive ways from the language of the policy herein. Certainly, the language of the two policies diverges in two particulars. First, unlike the policy in ***Sackett III***, the policy in this case is not **unambiguously** "definite." ***Compare Sackett III***, 4 A.3d at 640 n.2 (quoting the policy as providing that "[t]his [newly acquired vehicle] coverage applies only during the first 30 days you own the vehicle"), ***with*** Plaintiffs' Exhibits to Plaintiffs' Amended Complaint in Civil Action, Exh. 1, Personal Auto Special Provisions, at 1 ("[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 45 days after you become the owner."). Thus, Appellant contends, in contrast to the newly-acquired vehicle clause in ***Sackett III***, the instant policy does not unequivocally terminate coverage upon the expiration of a specific time period. Appellant also correctly

observes that the policy at issue in this case does not contain any language analogous to that pertaining to "other collectable insurance" in ***Sackett III***, language that Appellant contends informed, if it was not essential to, our ruling in that case. ***See*** 4 A.3d at 640 n.2.

Appellant certainly is correct that the finitude in general of a newly-acquired automobile provision was important to our Supreme Court's ruling in ***Sackett II***. Indeed, it was the linchpin of the ***Sackett II*** Court's imposition of certain limitations on the broadly-stated ***Sackett I*** holding:

> [T]he 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 [MVFRL] 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**, ***Sackett I*** **controls and requires the execution of a new UM/UIM 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, 940 A.2d at 334 (footnotes and citation omitted; emphasis added).

In ***Sackett III***, we construed the insured's acquisition of coverage for its newly-acquired vehicle as constituting "other collectable insurance," thus terminating any coverage granted under that clause. This, in turn, resulted in a "purchase" of new insurance, albeit under the extant policy. Under ***Sacket II***, this new purchase required the insurer to seek a new stacking waiver.

In so ruling, we specifically distinguished the policy at issue in ***Satterfield v. Erie Insurance Property and Casualty***, 618 S.E.2d 483 (W.V. 2005), which our Supreme Court compared to and contrasted with the policy at issue in ***Bird v. State Farm Mut. Auto. Ins. Co.***, 165 P.3d 343 (N.M. 2007). ***Sackett II***, 940 A.2d at 333-34. In ***Satterfield***, the West Virginia Supreme Court considered a clause that extended coverage to "autos [the insured] acquired during the policy period." ***Id.*** at 485. "The only condition imposed in connection with extending coverage to such vehicles [was] that the insured 'tell . . . [the insurer] about newly acquired autos during the policy period in which the acquisition takes place.'" ***Id.*** The newly-acquired vehicle clause in that case neither included language limiting coverage unambiguously to a finite period nor contained a provision concerning the termination of such coverage upon the acquisition of other "collectable insurance." ***Id.*** Appellant seeks to analogize the provision herein as materially identical to the ***Satterfield*** clause on the basis that, as in ***Satterfield***, the newly-acquired vehicle in this case required no more than notice within forty-five days of the acquisition of the new vehicle in question. Brief for Appellant at 22.

We detect important distinctions between the newly-acquired vehicle clause described in ***Satterfield*** and the clause at issue in the instant case. First, ***Satterfield*** did not impose a time limit on the requested notice that was shorter than the duration of the term of the policy period during which the car was acquired. 618 S.E.2d 485. Second, and more importantly to

our ruling in this case, the ***Satterfield*** provision simply required that the insured "tell [insurer] about" the acquisition. Unambiguously, this was a notice requirement. ***Id.***

In this case, by contrast, the newly-acquired vehicle clause called upon Appellees to "ask" Appellant to insure a newly-acquired vehicle within forty-five days of purchase. The clause *sub judice* appears to have required more than mere notice to sustain continuing coverage under an indefinite newly-acquired vehicle clause; it required Appellees to **seek** coverage from Appellant. Specifically, the instant provision indicates that, although coverage begins from the day ownership commences, any such coverage applies after forty-five days only if Appellees "**ask**[] [Appellant] to insure [the newly-acquired vehicle] within" those forty-five days. Auto Policy Definitions at 1, ¶K.2.a. Compare this to the circumstance when the newly-acquired vehicle **replaces** another: Then, "coverage is provided for this vehicle without having to **ask** [insurer] to insure it." ***Id.*** at 2, ¶K.2.a In common parlance, there can be no question that the word "ask" has a meaning distinct from the word "notice." "Notice" connotes the mere conveyance of information, which does not, in itself, require any particular action on the recipient of such notice. To "ask," however, is to invite

(indeed, request) a response.[8] It is at the very least reasonable to interpret this usage as indicating a "request" for coverage.

The presence of two credible interpretations of a single policy provision is the quintessence of ambiguity. To provide that the insured must "ask for" coverage within a prescribed time period, after which, absent such a request, coverage unequivocally will be terminated, implicates both the question of whether the requirement is merely one of notice **and** the question of the finitude of coverage under the newly-acquired vehicle clause. As noted *supra*, when interpreting an insurance policy, we must construe all ambiguities in favor of coverage. Accordingly, we must read "ask" as language that connotes Appellant's **prerogative to decline** to cover a newly-acquired vehicle following the denial of such a request or beyond the forty-five-day grace period provided by the policy. Read in that fashion, we must conclude that the contingent nature of Appellant's review of Appellees' request for the extension of the policy to encompass their third vehicle rendered Appellant's agreement to do so, and its memorialization of that agreement by endorsement, as reflective of a purchase of new insurance for

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[8] In relevant part, "ask" is defined as follows: "**1.** To put a question to. **2.** To seek an answer to . . . . **4.** To make a request of or for . . . ." American Heritage College Dictionary 80 (3d ed. 1993).

purposes of section 1738. Accordingly, upon that event, Appellant was bound to seek a new waiver of stacking under the policy.[9]

Finally, we are unpersuaded by a pair of impliedly policy-oriented arguments ventured by Appellant in this case. First, Appellant contends that to rule in Appellees' favor in this case would be to render newly-acquired vehicle provisions irrelevant, confounding a critical consideration that drove our Supreme Court's decision in ***Sackett II***. Appellant maintains that to so rule would require insurers in all instances to seek a UM stacking waiver when an insured furnished notice of the acquisition of a new vehicle, thus limiting ***Sackett II*** only to the assertedly *de minimis* period between the insured's acquisition of the new vehicle and his provision of notice of that purchase to the insurer.

We disagree that the period between purchase and notice is *de minimis* in all cases: The policy at bar herein, to cite one example, makes coverage contingent on the insurer being "asked" to insure the new purchase within forty-five days of the acquisition, hardly a *de minimis*

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[9] Implicit in Appellant's argument is the suggestion that a purchase of new insurance occurs only when an insurer conducts some degree of new evaluation or underwriting associated with the addition. In ***Sackett III***, we rejected this argument as immaterial to whether a given extension of insurance amounted to a new purchase of insurance under section 1738. ***See*** 4 A.3d at 641. As well, even if this argument had some legal support or facial validity, our reading of the word "ask" as used in the newly-acquired vehicle clause before us implies that some informal process of evaluation would be associated with fashioning a response to the insured's request to add a new vehicle to the policy.

period. Moreover, in ***Satterfield***, *supra*, the newly-acquired vehicle clause required notice only by the end of the insurance term during which the new vehicle was acquired, which would appear to mean that the permissible delay in reporting a new vehicle under some policies might be as long as six months, or even a year. These are not *de minimis* time periods. Moreover, at least two courts have espoused the view that the core purpose of newly-acquired vehicle clauses is to ensure coverage during the periods between acquisition of a new vehicle and notice to the insurer, followed by the completion of such subsequent steps, if any, are prescribed by the policy to extend coverage. ***See Satterfield***, 618 S.E.2d at 487 (quoting ***Bramlett v. State Farm Mut. Auto. Ins. Co.***, 468 P.2d 157, 169 (Kan. 1970)) ("The purpose of the . . . 'newly acquired automobile clause' . . . is to provide coverage when an owned automobile is not described in a policy. When specific insurance is purchased and a separate policy is issued on the automobile[,] it becomes an automobile described in a new policy and it is no longer a 'newly acquired automobile.' At that time the terms and provisions of the . . . 'newly acquired automobile clause' are no longer applicable to the automobile.").

Appellant's implied argument that affirmance of the trial court's ruling would confound the frequently restated cost-cutting intent underlying the MVFRL is also unconvincing under the circumstances of this case. As noted *supra*, the thrust of the cost-cutting concern often cited in connection with the MVFRL is simply to avoid the uniform imposition of premium hikes

associated with the provision of auto insurance under the no-fault system by adopting a more individualized approach, where a given insured's premiums are dictated by the insurer's determination of the risks associated with that insured as well as the level of coverage for which the insured opts to pay. ***See Craley***, 895 A.2d at 542. Neither our reading of ***Sackett III*** nor our coverage ruling under the particular facts of this case confounds those concerns: Appellees in this case were not entitled to stacked coverage until they asked for coverage of the new vehicles, as required by their policy. In providing such insurance, Appellant was free to seek to renew the prior waiver in light of the newly purchased insurance, and to adjust Appellees' premium accordingly. Moreover, nothing in our prior cases suggests that the mere burden of requesting a new waiver of stacked coverage under these circumstances or those in ***Sackett III*** is at odds with the cost-cutting objectives underlying the MVFRL as expounded in ***Craley***. The provision of such forms by insurers to insureds is routine. The burden of providing the same form under the circumstances at bar is *de minimis*.

Based upon the ambiguity inherent in the newly-acquired vehicle clause at issue in this case, and our obligation to construe such an ambiguity in favor of the insured, we conclude that the addition of Appellees' third vehicle to the policy issued by Appellant constituted a "purchase" of insurance under 75 Pa.C.S. § 1738. As in ***Sackett III***, that purchase triggered an obligation on the part of Appellant to confirm anew whether Appellees wished to waive stacking. As required by section 1738,

Appellant's failure to do so dictated that it provide stacked coverage. Accordingly, the trial court did not err in its result.

We premise our ruling in this case narrowly on the ambiguity intrinsic to the word "ask" as used in the clause at bar. Thus, we need not determine whether the addition of a vehicle to a policy by endorsement, without more, obviates ***Sackett II***'s carefully crafted exception to ***Sackett I***'s broader holding. To the extent that the trial court's opinion can be read as hinging on that view, we express no opinion on it, and we leave the matter for another day.

Order affirmed. Jurisdiction relinquished.

Colville, J. files a Dissenting Opinion.