

[J-41-2019]  
IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

**SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.**

MICHELLE BARNARD,	:	No. 42 EAP 2018
	:	
Appellant	:	Certification of Question of Law from
	:	the United States Court of Appeals for
	:	the Third Circuit at No. 18-1456
v.	:	
	:	ARGUED: May 14, 2019
	:	
THE TRAVELERS HOME AND MARINE	:	
INSURANCE COMPANY,	:	
	:	
Appellee	:	

**OPINION**

**JUSTICE WECHT**

**DECIDED: September 26, 2019**

This case comes to us by way of a certified question of law from the United States Court of Appeals for the Third Circuit. That court inquires whether an increase to the limits of underinsured motorist (“UIM”) coverage for multiple vehicles that are insured under an existing policy constitutes a “purchase” for purposes of Subsection 1738(c) of the Pennsylvania Motor Vehicle Financial Responsibility Law (“MVFRL”).<sup>1</sup> Based upon the plain language of Subsection 1738(c), we conclude that it does. Therefore, an increase of UIM coverage under such circumstances triggers an insurance company’s statutory obligation to offer an insured the opportunity to waive stacking of the new, aggregate amount of UIM coverage.

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<sup>1</sup> 75 Pa.C.S. § 1738(c).

## I. Background

In September 2007, Michelle Barnard purchased a personal automobile policy from Travelers Home and Marine Insurance Company (“Travelers”) to insure her two vehicles. As part of this policy, Barnard purchased UIM coverage in the amount of \$50,000 per vehicle. Barnard waived stacking of her UIM coverage limits.<sup>2</sup>

On May 24, 2009, Barnard increased the UIM coverage limit on each of her vehicles to \$100,000. Barnard did not execute a new stacking waiver at that time.

On June 17, 2016, Barnard was involved in a motor vehicle accident with an underinsured motorist. When Barnard sought UIM benefits from Travelers, Travelers offered her \$100,000 based upon the UIM coverage limit on one of her vehicles. Barnard filed a complaint for declaratory judgment, seeking \$200,000 in stacked UIM benefits. Travelers removed the case to the United States District Court for the Eastern District of Pennsylvania, where the parties filed cross-motions for summary judgment.

On February 5, 2018, the District Court granted Barnard’s cross-motion for summary judgment. *Barnard v. Travelers Home & Marine Ins. Co.*, 289 F. Supp. 3d 633 (E.D. Pa. 2018). The court opined that the case turned on the meaning of the term “purchase” in Subsection 1738(c).<sup>3</sup> Noting that, under the rules of statutory construction, the plain language of a statute controls, the court observed that, in common usage, “to

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<sup>2</sup> UIM coverage allows an insured to collect money from her insurance company if she is involved in an accident with a motorist who lacks adequate insurance coverage to compensate the injured insured in full. Similarly, uninsured motorist (“UM”) coverage allows an insured to collect money from her insurance company if she is involved in an accident with a motorist who lacks insurance. When an individual purchases UIM or UM coverage for multiple vehicles, “stacking” allows the insured to aggregate the UIM or UM coverage limits on all of her insured vehicles to increase the amount of coverage available in the event of an accident.

<sup>3</sup> 75 Pa.C.S. § 1738(c) states: “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 . . . .”

purchase” means “to buy” or “to acquire something by paying for it.” *Id.* at 636. Rejecting Travelers’ argument that Barnard’s increase to her UIM coverage limits constituted an alteration to an existing policy rather than a purchase, the court reasoned that Barnard paid a higher premium to obtain an increased UIM coverage limit. Thus, under a plain meaning analysis of Subsection 1738(c), the court found that Barnard had purchased UIM coverage, requiring Travelers to obtain a new stacking waiver.

Although the District Court recognized that there were no Pennsylvania cases directly on point, it observed that “such case law as there is favors a literal reading of Section 1738 in this context.” *Id.* The court pointed out that, in *Sackett v. Nationwide Mut. Ins. Co.*, 919 A.2d 194 (Pa. 2007) (“*Sackett I*”),<sup>4</sup> this Court found that an insurance company’s obligation to secure a stacking waiver was not limited to the initial purchase of an insurance policy. The District Court also cited approvingly the Pennsylvania Superior Court’s discussion of stacking waivers in *Shipp v. Phoenix Ins. Co.*, 51 A.3d 219 (Pa. Super. 2012). In *Shipp*, an individual purchased an insurance policy and waived stacking of UM and UIM coverage. Subsequently, he replaced two vehicles insured under the policy with new vehicles, and added collision coverage for one of the vehicles. Despite the insured’s argument that his insurance company was required to obtain a new stacking waiver after these changes, the *Shipp* court noted “that the matter of importance in all of these cases, as well as in Section 1738, pertains only to the UM/UIM coverage, whether it has changed, and whether a new waiver of stacked coverage is required.” *Id.*

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<sup>4</sup> This case is often referred to as “*Sackett I*” because, after granting an application for reargument, this Court modified its position by means of its decision in *Sackett v. Nationwide Mut. Ins. Co.*, 940 A.2d 329 (Pa. 2007) (“*Sackett II*”). In *Sackett II*, this Court “clarif[ied] that *Sackett I* does not preclude the enforcement of an initial waiver of stacked UM/UIM relative to coverage extended under after-acquired vehicle provisions of an existing multi-vehicle policy.” *Id.* at 333. However, in the absence of an after-acquired vehicle clause, the *Sackett II* Court noted, *Sackett I* continues to control. *Id.* at 334. Because an after-acquired vehicle clause is not at issue in the present case, the holding in *Sackett I* applies.

at 224. Because the amount of UM and UIM coverage remained the same after the changes to the insured's policy, the *Shipp* court concluded that he did not "purchase" new UM or UIM coverage. Thus, no new stacking waiver was required. The District Court here recognized that *Shipp's* language was *dicta* inasmuch as the Superior Court was deciding whether the replacement of vehicles and the addition of collision coverage, rather than UM/UIM coverages, necessitated the execution of a new stacking waiver. However, the District Court opined that this *dicta* "sensibly describe[d] Pennsylvania case law," and, therefore, was "deserving of serious consideration." *Barnard*, 289 F. Supp. 3d at 639. Consistent with the Superior Court's *dicta* in *Shipp*, the District Court held that, because Barnard had acquired additional UIM coverage for both of her vehicles in 2009, she had purchased UIM coverage such that a new stacking waiver was required.

On appeal, the Third Circuit observed that Section 1738 did not define the term "purchase." Without any prior cases on point, that court concluded that it could not resolve the question before it with confidence. Thus, the Third Circuit filed a petition to certify the question to this Court. On December 27, 2018, we granted the petition in order to consider the following question:

If an insured under a policy of insurance subject to the Pennsylvania Motor Vehicle Financial Responsibility Law has waived stacking but later secures an increase in the limit of her UIM coverage on her existing policy, must her insurance carrier obtain a separate waiver of her right to stack the coverage or does a prior waiver of the right to stack the coverage remain in effect?

*Barnard v. Travelers Home & Marine Ins. Co.*, 199 A.3d 864 (Pa. 2018) (*per curiam*).

In her brief to this Court, Barnard agrees with the District Court that the term "purchase" in Subsection 1738(c) is unambiguous and should be afforded its ordinary meaning: to acquire something by paying for it. By paying increased insurance premiums to obtain higher UIM coverage limits on both of her vehicles, Barnard maintains, she

effectuated a purchase, thus requiring Travelers to offer her the opportunity to waive stacking of the new, aggregate amount of UIM coverage.

Barnard also points out that the stacking rejection form provided in Subsection 1738(d)(2) states that, by signing it, an insured “knowingly and voluntarily reject[s] the stacked limits of coverage.” 75 Pa.C.S. § 1738(d)(2). By signing a stacking waiver when she first purchased the Travelers policy in 2007, Barnard asserts, she rejected stacking of her then-existing UIM coverage limits, but could not knowingly and voluntarily reject stacking of the increased UIM coverage limits that she would not obtain until 2009.

Moreover, Barnard contends, public policy favors the District Court’s interpretation of Subsection 1738(c) because this interpretation encourages consumers to make informed decisions when purchasing insurance. Because Travelers failed to obtain a new stacking waiver when she increased her UIM coverage limits, Barnard maintains that she should be permitted to stack her UIM benefits.

In response, Travelers asserts that the term “purchase,” as used in Subsection 1738(c), refers only to the insured’s initial purchase of an insurance policy, not to subsequent changes to coverage limits. Travelers argues that this interpretation is consistent with Section 1791 of the MVFRL, which requires insurance companies to provide an insured with a notice of benefits and coverage limits only when the insured initially applies for insurance. Further, although Travelers concedes that there is no case law directly on point, it notes that Pennsylvania state and federal courts consistently have held that an insured’s original coverage selections and rejections remain effective throughout the lifetime of the insurance policy, regardless of subsequent changes to that policy. Travelers asserts that stacking rejection forms should likewise remain effective, regardless of subsequent changes to UIM coverage limits.

Travelers and its *amici curiae* also posit that adopting the District Court’s interpretation of the term “purchase” as the payment of an increased premium would lead to absurd results.<sup>5</sup> For example, Travelers contends that, under this interpretation, a purchase would occur anytime an insured pays to renew her insurance policy after her premium increased due to inflation, or anytime an insured replaces an older vehicle on her policy with a newer model. According to Travelers and its *amici*, the General Assembly did not intend to require insurance companies to secure new stacking waivers in such instances. Further, Travelers’ *amici* observe that relying solely on the term “purchase” in Subsection 1738(c) fails to give meaning to the entire statutory section. *Amici* emphasize that Section 1738 discusses stacking only in relation to the number of vehicles as to which a policyholder is insured.<sup>6</sup> Accordingly, *amici* assert, stacking waivers are unnecessary when an insured alters UIM coverage limits, because such an alteration does not relate to the number of insured vehicles.

Finally, Travelers and its *amici* assert that the District Court’s interpretation of Subsection 1738(c) contravenes public policy. According to Travelers, requiring

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<sup>5</sup> The Pennsylvania Defense Institute, the Insurance Federation of Pennsylvania, and the Philadelphia Association of Defense Counsel filed a joint brief as *amici curiae* in support of Travelers.

<sup>6</sup> See 75 Pa.C.S. § 1738(a) (“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 insured*.”) (emphasis added by *amici*); *id.* § 1738(c) (“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 . . . .”) (emphasis added by *amici*); *id.* § 1738(d)(2) (“By signing this waiver, I am rejecting stacked limits of underinsured motorist coverage under the policy for myself and members of my household under which the limits of coverage available would be the sum of limits for *each motor vehicle* insured under the policy.”) (emphasis added by *amici*).

insurance companies to obtain waivers any time an insured increases her UIM coverage limits would be detrimental to the insurance industry. In particular, Travelers argues that, because insurance companies historically have not obtained new stacking waivers after such increases, many insureds will be permitted to receive stacked UIM benefits even though they have been paying reduced premiums in exchange for their rejections of stacked coverage.<sup>7</sup> According to Travelers, insurance companies likely will pass on the costs of these unexpected payouts, as well as the greater administrative costs of fulfilling this obligation, to consumers in the form of increased premiums. Moreover, Travelers and its *amici* contend that this new requirement will introduce uncertainty into the insurance industry because companies will have to establish entirely new procedures to fulfill this obligation.

Because Barnard's increase to her UIM coverage limits constituted an alteration to an existing policy rather than a purchase within the meaning of Subsection 1738(c), Travelers and its *amici* ultimately conclude that Barnard's initial stacking waiver was still effective at the time of her accident, and that she is therefore not entitled to stack her UIM benefits.

## **II. Analysis**

Because the certified question in this case requires us to interpret a provision of the MVFRL, it poses an issue of law over which our scope of review is plenary, and our standard of review is *de novo*. *Everhart v. PMA Ins. Grp.*, 938 A.2d 301, 304 n.2 (Pa. 2007). When we interpret legislative enactments, we are guided by the Statutory Construction Act, which recognizes that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.”

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<sup>7</sup> See 75 Pa.C.S. § 1738(c) (“The premiums for an insured who [waives stacking] shall be reduced to reflect the different cost of such coverage.”).

1 Pa.C.S. § 1921(a). “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” *Id.* § 1921(b). Words and phrases within a statute must be “construed according to rules of grammar and according to their common and approved usage,” *id.* § 1903(a), and must be read within the context of the remaining statutory language. *Commonwealth v. Office of Open Records*, 103 A.3d 1276, 1285 (Pa. 2014). It is only when the plain language of a statute is ambiguous that courts may resort to other tools of statutory construction in order to ascertain the General Assembly’s intent. See 1 Pa.C.S. § 1921(c).

In relevant part, Section 1738 provides:

(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.

(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.

(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.

(d) Forms.—

...

(2) The named insured shall be informed that he may exercise the waiver of the stacked limits of underinsured motorist coverage by signing the following written rejection form:



## Underinsured Coverage Limits

By signing this waiver, I am rejecting stacked limits of underinsured motorist coverage under the policy for myself and members of my household under which the limits of coverage available would be the sum of limits for each motor vehicle insured under the policy. Instead, the limits of coverage that I am purchasing shall be reduced to the limits stated in the policy. I knowingly and voluntarily reject the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.

75 Pa.C.S. § 1738. Thus, an insurance company must offer an insured the opportunity to waive stacking of UIM coverage limits whenever she purchases UIM coverage “for more than one vehicle under a policy.” *Id.* § 1738(c). If an insurance company does not obtain a stacking waiver at that time, the amount of UIM coverage available to an insured is “the sum of the limits for each motor vehicle as to which the injured person is an insured.” *Id.* at 1738(a).

As the District Court aptly observed, this case turns upon the meaning of the term “purchase” in Subsection 1738(c). Black’s Law Dictionary defines “purchase” as “[t]he act or an instance of buying.” *Purchase*, Black’s Law Dictionary (11th ed. 2019). In common usage, “to buy” means to acquire or obtain something by paying for it. Thus, under a plain meaning analysis of Subsection 1738(c), an insured purchases UIM coverage when she pays to acquire UIM coverage “for more than one vehicle under a policy.” 75 Pa.C.S. § 1738(c). Contrary to Travelers’ contentions, nothing in Subsection 1738(c) limits the term “purchase” to an insured’s *initial* purchase of an insurance policy. Rather, the subsection requires the execution of a new stacking waiver any time an insured pays to obtain UIM coverage for multiple vehicles, regardless of whether this acquisition occurs when an individual initially applies for insurance, or when she subsequently pays to obtain additional UIM coverage.

The language of the stacking rejection form contained in Subsection 1738(d)(2) supports this interpretation of the term “purchase.” Subsection 1738(d)(2) states that an

insured may waive the stacked limits of UIM coverage by signing the form outlined therein. This form provides that, by signing it, the insured signals an understanding that “the *limits of coverage that I am purchasing* shall be reduced to the limits stated in the policy.” *Id.* § 1738(d)(2) (emphasis added). Thus, the form acknowledges that the purchase to which Subsection 1738(c) refers is the purchase of a UIM coverage limit, rather than the purchase of the insurance policy itself.

Moreover, the waiver in Subsection 1738(d)(2) informs the insured that, by signing it, she “knowingly and voluntarily reject[s] the stacked limits of coverage.” *Id.* At the time that an insured executes a stacking waiver, the only stacked limits of coverage that she can reject knowingly is the current, aggregate amount of coverage on all of the vehicles as to which she is insured. If an insured subsequently decides to increase the amount of UIM coverage on her vehicles, in order for her to “knowingly and voluntarily reject” this new, aggregate amount of coverage, she must execute a new stacking waiver.

Additionally, limiting the term “purchase” to an individual’s initial purchase of an insurance policy would contravene Subsection 1738(c) in certain instances. For example, if an insured declines UIM coverage when she initially purchases her policy, but later decides to add UIM coverage for multiple vehicles, pursuant to this interpretation, the insurance company would be obligated to offer her the opportunity to waive stacking only when she initially applied for the policy. Thus, the insured would receive an opportunity to waive stacking when she did not have UIM coverage, but not when she later acquired this coverage. Such a result would defy logic and would fail to effectuate Section 1738’s mandate that insureds receive an opportunity to waive stacking when they purchase UIM coverage for multiple vehicles.

*Sackett I* offers further support for our conclusion that an insured’s acquisition of additional UIM coverage for multiple vehicles constitutes a purchase under Subsection

1738(c). In that case, the Sacketts initially applied for insurance for two vehicles, and executed a stacking waiver at that time. Later, the couple added a third vehicle to their insurance policy, and acquired UIM coverage for it. However, the Sacketts did not execute a new stacking waiver.

In deciding whether obtaining UIM coverage for an additional vehicle constituted a purchase within the meaning of Subsection 1738(c), this Court rejected the argument that Subsection 1738(c) only required the insurance company to provide a stacking waiver when the couple initially applied for insurance. We reasoned that the Sacketts could not have purchased UIM coverage for a third vehicle when they initially applied for insurance because they had not yet acquired a third vehicle. We also noted that it was impossible for the Sacketts to waive the stacked limits of UIM coverage for three vehicles during their initial application because, at that time, the sum of UIM coverage available to stack was limited to the amount of UIM coverage on the Sacketts' two vehicles. By contrast, when the Sacketts added UIM coverage for a third vehicle, we explained, the aggregate amount of UIM coverage increased, entitling the couple to waive stacking of this new, aggregate amount of coverage. We opined that "Section 1738(c), read as a whole, 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." *Sackett I*, 919 A.2d at 202. Thus, under the rationale of *Sackett I*, an insurance company must offer an insured the opportunity to waive stacking whenever she obtains additional UIM coverage for multiple vehicles because the amount of UIM coverage that may be stacked increases.

Despite Travelers' contentions that Section 1791 supports its interpretation of the term "purchase," we find this section irrelevant to the present case. Like the stacking rejection form provided in Subsection 1738(d)(2), Section 1791 sets forth a particular notice that insurance companies may provide applicants to advise them of available

benefits and coverage limits. If an insurance company provides this notice “at the time of application for original coverage . . . no other notice or rejection shall be required.” 75 Pa.C.S. § 1791. Critically, the notice contained in Section 1791 does not discuss stacking. Thus, Section 1738’s express requirement that an insurance company offer an insured the opportunity to waive stacking is an additional obligation outside the purview of Section 1791. Accordingly, we cannot assume that, like Section 1791, Section 1738 requires insurance companies to offer rejection forms only when an individual initially applies for a policy. Likewise, although prior cases have held that initial insurance selections and rejections remain effective regardless of subsequent changes to the insurance policy, as both parties concede, none of these cases addresses the acquisition of additional UIM coverage for multiple vehicles under Subsection 1738(c).<sup>8</sup> In light of the plain language of Subsection 1738(c), and the plain meaning of the term “purchase,” we fail to find the reasoning of these cases persuasive in resolving the present question.

Travelers and its *amici* also argue that this interpretation of the term “purchase” requires an insurance company to obtain a new stacking waiver whenever an insured pays an increased premium. We emphasize that, in ordinary usage, the term “purchase” requires two things: (1) the acquisition of something; and (2) payment. Paying an increased premium satisfies the second requirement, but, in order to satisfy the first, the insured must obtain something that she does not already possess. Specifically, in the context of Subsection 1738(c), an insured must obtain UIM coverage. An insured paying

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<sup>8</sup> See, e.g., *Cahall v. Ohio Cas. Ins. Co.*, No. 14-1246, 2015 WL 4407563 (W.D. Pa. Jul. 20, 2015) (recognizing that the insureds’ rejection of UIM coverage remained effective despite their addition of a new vehicle to their policy); *Nationwide Mut. Ins. Co. v. Merdjanian*, No. 03-5153, 2005 WL 545299 (E.D. Pa. Mar. 4, 2005) (determining that an initial rejection of UIM benefits remained effective after an insured subsequently increased the policy’s bodily injury liability limits); *Smith v. Hartford Ins. Co.*, 849 A.2d 277 (Pa. Super. 2004) (finding that a new rejection of UIM benefits was not required when an insured increased the policy’s liability coverage).

for an increased UIM coverage limit undoubtedly acquires more UIM coverage than she initially had. However, an insured who pays an increased premium due to inflation or because she replaced an old vehicle on her policy with a newer model does not acquire any more UIM coverage than she already has. Rather, her payment maintains the same amount of UIM coverage that she acquired previously, making a new stacking waiver unnecessary.

Similarly, while we recognize that Section 1738 discusses stacking in terms of purchasing UIM coverage for multiple vehicles, we disagree with Travelers' *amici* that an increase in UIM coverage limits cannot constitute a purchase because it does not relate to the number of vehicles insured under the policy. Rather, we find that the section's references to multiple vehicles merely acknowledges that stacking is only possible when an insured possesses UIM coverage for multiple vehicles. Therefore, for practical purposes, Subsection 1738(c) only requires insurance companies to offer stacking waivers when an insured obtains UIM coverage for multiple vehicles.

We recognize the concerns of Travelers and its *amici* that our holding will have a negative impact on the insurance industry. However, invocations of, and arguments about, public policy cannot override the plain language of Subsection 1738(c), nor can they contravene the plain meaning of the term "purchase."<sup>9</sup> Based upon the unambiguous language of this subsection, we conclude that an insurance company must offer an insured the opportunity to waive stacking any time she acquires UIM coverage for more than one vehicle, regardless of whether this acquisition occurs when she initially applies

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<sup>9</sup> Moreover, we observe that the "additional procedures and paperwork" that our holding requires, see Brief for Travelers at 45, are unlikely to impose a significant burden on insurance companies. Insurance companies provide insureds with a variety of forms to review and sign throughout the lifetime of their policies, including forms to renew their policies and to effectuate changes in coverage. Our holding merely requires these companies to provide an additional form when an insured purchases UIM coverage for multiple vehicles.

for an insurance policy or when she subsequently increases her UIM coverage limits for multiple vehicles. Here, Barnard paid to obtain additional UIM coverage for her two vehicles in 2009. Therefore, Travelers was required to offer her the opportunity to waive stacking of the new, aggregate amount of UIM coverage at that time.

Having answered the question posed, we now return the matter to the United States Court of Appeals for the Third Circuit.

Justices Baer, Todd, Donohue, Dougherty and Mundy join the opinion.

Chief Justice Saylor files a dissenting opinion.