

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

GOODVILLE MUTUAL CASUALTY  
COMPANY

v.

MALLORY McNEAR  
and  
KAREN McNEAR  
and  
TODD McNEAR

NO. CI-20-03012

PROTHONOTARY'S OFFICE  
LANCASTER, PA  
23 MAY 25 PM 4:13  
ENTERED AND FILED

ORDER

AND NOW, this 25<sup>th</sup> day of May, 2023, upon  
consideration of the Cross Motions for Summary Judgment, the Stipulation of Facts and  
Supplemental Stipulated of Facts as well as the supporting briefs of the parties, it is  
hereby ORDERED that the Plaintiff's Motion is GRANTED and Defendant's Motion is  
DENIED. Judgment is entered in favor of Goodville Mutual Casualty Company who has  
no further obligation under its policy with respect to the subject UIM claim of  
Defendants.

BY THE COURT:



The Honorable Jeffrey A. Conrad



ATTEST: 

Copies to:

Richard W. Yost, Esquire (Counsel for Plaintiff)  
Darren L. Harrison, Esquire (Counsel for Plaintiff)  
Alan M. Herman, Esquire (Counsel for Defendants)  
James C. Haggerty Esquire (Counsel for Defendants)

A1

NOTICE OF ENTRY OF ORDER OR DECREE  
PURSUANT TO PA. R.C.P. NO. 236  
NOTIFICATION - THE ATTACHED DOCUMENT  
HAS BEEN FILED IN THE CASE  
PROTHONOTARY OF LANCASTER CO., PA  
DATE: 5/25/23

Handwritten mark in red ink, possibly initials.

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**OPINION AND ORDER**

By **CONRAD, J.**

**DATED: May 25, 2023**

Before the Court are the Cross-Motions for Summary Judgment filed on behalf of Plaintiff, Goodville Mutual Casualty Company (“Goodville”) and Defendants Mallory McNear, Karen McNear and Todd McNear (“McNear”).<sup>1</sup> At issue is the interpretation of Section 1734 of the Pennsylvania Motor Vehicle Responsibility Law, (“MVFRL”) 75 Pa. C.S.A. §§ 1701 et seq. For the reasons set forth below, the motion of Plaintiff will be granted and the Defendants’ motion will be denied.

**Procedural and Factual Background**

On October 21, 2018, Mallory McNear sustained personal injuries as a result of a motor vehicle accident. After resolving the claim against the tortfeasor, she made a claim for Underinsured Motorists benefits (“UIM”) under the Goodville policy issued to her parents Karen and Todd E. McNear.<sup>2</sup> Goodville tendered what it claimed was due

<sup>1</sup> According to the filings of the parties, Karen McNear is now deceased.

<sup>2</sup> See Goodville Complaint and McNear Answer ¶¶ 11; Goodville Motion Summary Judgment and McNear Answer, ¶¶ 1-27.

McNear pursuant to the policy, which was \$150,000.00 UIM benefits, subject to a complete reservation of rights to file a Declaratory Judgment action, for personal injuries sustained by Mallory McNear.

On March 25, 2020, Goodville filed its complaint for declaratory judgment, seeking an Order declaring that Goodville has paid its full UIM coverage limits in the amount of \$150,000.00 (\$50,000.00 each person/\$100,000 each accident for three vehicles, stacked) for Mallory McNear's UIM claim in accordance with the policy limits and the MVFRL. On November 18, 2020, McNear filed an Answer and asked the Court to enter judgment in their favor and declare that Goodville provide UIM coverage in the amount of \$250,000.00/\$500,000.00 per vehicle multiplied by three vehicles insured under the policy for a total UIM limits of \$750,000.00/\$1.5 million less the \$150,000.00 amount already paid by Goodville.

On May 6, 2022, following discovery but before any summary judgment motions were filed, the parties filed a Stipulation of Undisputed Facts which was later supplemented on April 14, 2023. The supplemental Stipulation of Undisputed Facts filed on April 14, 2023, is set forth in its entirety below.<sup>3</sup>

1. Goodville issued a personal auto policy to Karen McNear and Todd McNear ("Goodville Policy") effective February 23, 2012. A true and correct copy of the Declaration Pages for the issuance of the Goodville Policy is attached as Exhibit "A."
2. Mallory McNear is the daughter of Karen McNear and Todd McNear.
3. At all times material hereto, Mallory McNear resided with her parents, Karen McNear and Todd McNear.

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<sup>3</sup> The file was originally assigned to the President Judge David L. Ashworth on April 6, 2020. On July 20, 2022, the file was reassigned to the Honorable Shawn M. Long who passed away on January 7, 2023. The file was reassigned to the undersigned on January 18, 2023.

4. The Goodville Policy had an inception date of February 23, 2012. See Exhibit "A."
5. The Goodville Policy was thereafter renewed every six months.
6. The Goodville Policy remained in effect at the time of the October 21, 2018 accident forming the basis of the claims in this matter. A true and correct copy of the Declarations Pages for the Goodville Policy in effect at the time is attached as Exhibit "B."
7. At the time of inception, the Goodville Policy provided, *inter alia*, \$250,000.00 Each Person/\$500,000.00 Each Accident in Bodily Injury Liability coverage and \$50,000.00 Each Person/\$100,000.00 Each Accident in stacked underinsured motorist coverage for three (3) vehicles.
8. On February 25, 2012, Karen McNear, the first named insured under the Goodville Policy, signed a § 1734 Election of Lower Limits of Underinsured Motorist Coverage, electing \$50,000.00 Each Person/\$100,000.00 Each Accident in stacked underinsured motorist coverage for three (3) vehicles. True and correct copies of the Personal Auto Application and the various forms signed in connection with the Goodville Policy are attached as Exhibit "C."
9. At the time of inception, the Goodville Policy provided coverage for the following three vehicles:
  - 2022 Ford Taurus;
  - 2001 Nissan XT; and
  - 1995 Chevrolet Suburban

See Exhibit "A."

10. On October 27, 2012, a 2004 Ford Expedition was added to the Goodville Policy increasing the number of vehicles on the policy from three to four. True and correct copies of the Endorsement and the Declarations Pages are attached as Exhibit "D."
11. No new § 1734 Election of Lower Limits of Underinsured Motorist Coverage was obtained by Goodville from Karen McNear or Todd McNear following the addition of the 2004 Ford Expedition to the Goodville Policy.
12. On June 27, 2013, the 2001 Nissan XT was removed from the Policy thereby reducing the number of vehicles insured under the Goodville Policy from four to three. True and correct copies of the Endorsement and Declarations Pages are attached as Exhibit "E."

13. On May 19, 2017, the 2002 Ford Taurus was removed from the Goodville Policy reducing the number of vehicles on the Goodville Policy from three to two. True and correct copies of the Endorsement and Declarations Pages are attached as Exhibit "F."
14. On May 25, 2018, a 2018 Jeep Cherokee was added to the Goodville Policy increasing the number of vehicles on the policy from two to three. True and correct copies of the Endorsement and Declarations Pages are attached as Exhibit "G."
15. No new § 1734 Election of Lower Limits of Underinsured Motorist Coverage was obtained from Karen McNear and Todd McNear by Goodville following the addition of the 2018 Jeep Cherokee to the Goodville Policy.
16. On October 21, 2018, Mallory McNear was a passenger in a vehicle operated by Allan Mendenhall which was struck by a vehicle operated by Mary Thomas.
17. Mallory McNear sustained injuries in the October 21, 2018 accident.
18. The October 21, 2018 accident was caused by the negligence of Mary Thomas.
19. Following the October 21, 2018 accident, Mallory McNear made a claim upon Mary Thomas and her insurer seeking recovery of damages in tort.
20. Following receipt of the claim for recovery of damages in tort, the insurer for Mary Thomas tendered and paid to Mallory McNear the liability limits of coverage under that policy.
21. Following the resolution of the tort claim, Mallory McNear made a claim upon Goodville for recovery of underinsured motorist benefits under the Goodville policy.
22. At the time of the October 21, 2018 accident, the Goodville Policy insured the following three vehicles:
  - 1995 Chevrolet Suburban
  - 2004 Ford Expedition; and
  - 2018 Jeep Cherokee

See Exhibit "B."

23. Following receipt of the claim of Mallory McNear for recovery of underinsured motorist benefits, Goodville tendered and paid to Mallor McNear \$150,000.00 in underinsured motorist coverage representing the \$50,000.00 limit stacked for three vehicles.

24. No new § 1734 Election of Lower Limits of Underinsured Motorist Coverage was obtained from Karen McNear or Todd McNear by Goodville after February 25, 2012.
25. No request for any changes to the coverage amounts for liability coverage, uninsured motorist coverage or underinsured motorist coverage was made by Karen McNear or Todd McNear upon Goodville for the coverages under the Goodville Policy after February 25, 2012.
26. Mallory McNear maintains the position that the addition of new vehicles to the Goodville Policy after February 25, 2012 required Goodville to Obtain a new § 1734 Election of Lower Limits of Underinsured Motorist Coverage.
27. Mallory McNear maintains the position that the failure of Goodville to obtain a new § 1734 Election of Lower Limits of Underinsured Motorist Coverage with the addition of new vehicles to the Goodville Policy requires that the limit of underinsured motorist coverage be reformed by Goodville from \$50,000.00 Each Person/\$100,000.00 Each Accident to \$250,000.00 Each Person/\$500,000.00 Each Accident stacked for three vehicles, namely, a total of \$750,000.00 in underinsured motorist coverage.
28. Goodville maintains the position that (a) it was not required to obtain a new § 1734 Election of Lower Limits of Underinsured Motorist Coverage when new vehicles were added to the Goodville Policy after the first named insured, Karen McNear, executed the § 1734 Election of Lower Limits of Underinsured Motorist Coverage on February 25, 2012; (b) that the limit of underinsured motorist coverage need not be reformed; and (c) therefore, Mallory McNear can obtain no additional underinsured motorist benefits from Goodville under the Goodville Policy.

On June 29, 2022, Goodville filed its Motion for Summary Judgment. On August 24, 2022, McNear filed an Answer to the Summary Judgment Motion and filed a Cross Motion for Summary Judgment. On September 14, 2022, Goodville filed its Answer to the Cross Motion.

As framed by Goodville, the issue is whether an election of lower UIM policy limits remains enforceable after a car is later added to the policy. The issue as framed by McNear is whether Goodville is required to obtain a new § 1734 Election of Lower Limits of uninsured and underinsured coverages under the MVFRL, when a new vehicle is

added to an existing policy as the addition constitutes a "purchase." McNear argues that the failure to obtain those new elections requires Goodville to provide the default liability coverage amount.

### **Discussion**

The facts are not disputed having been stipulated to by the parties in their cross-motions for summary judgment. The sole issue requires the Court to interpret a provision of the MVFRL, which, according to the parties, is a question of first impression. The question as viewed by the Court is whether an insurer must again provide its insured with a new section 1734 sign down form for lower underinsured motorist benefits when the insured adds another vehicle to an existing multi-vehicle policy. The standard for summary judgment provides as follows.

"A trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." *Bourgeois v. Snow Time, Inc.*, 663 Pa. 376, 397-98, 242 A.3d 637, 649-50 (2020)(citing *Summers v. Certaineed Corp.*, 606 Pa. 294, 997 A.2d 1152, 1159 (2010)). It is the moving party's burden to demonstrate the absence of any issue of material fact, and the trial court must evaluate all the facts and make reasonable inferences in a light most favorable to the non-moving party. *Id.* The trial court must also resolve any doubts as to the existence of a genuine issue of material fact against the moving party and "may grant summary judgment only where the right to such a judgment is clear and free from doubt." *Id.* (citing *Toy v. Metro. Life Ins. Co.*, 593 Pa. 20, 928 A.2d 186, 195 (2007)).

As can be seen from the stipulated facts and the incorporated exhibits containing the policy application and the declaration pages, McNear has added and removed vehicles since the Goodville policy's inception on February 23, 2012. It is undisputed that throughout the life of the Goodville policy, McNear never changed the amount of liability coverage, the amount of Uninsured ("UM") and Underinsured ("UIM") coverage and it is undisputed that McNear never rejected UM/UIM coverage nor waived stacking of UM/UIM coverage.

There has been a tremendous amount of litigation concerning the sections pertaining to UM/UIM coverage within the MVFRL. All of those appellate decisions began their analysis with the Statutory Construction Act and this Court is likewise guided.

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. Words and phrases within a statute must be construed according to the rules of grammar and according to their common and approved usage and must be read within the context of the remaining statutory language. 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.

*Barnard v. Travelers Home and Marine Ins. Co.*, 654 Pa. 604, 612, 216 A.3d 1045, 1050-51 (internal citations omitted).

The statute in question, 75 Pa. C.S.A. § 1734, states as follows:

**§ 1734 Request for lower limits of coverage.--**

**A named insured may request in writing the issuance of coverages under section 1731 (relating to availability, scope and amount of coverage) in amounts equal to or less than the limits of liability for bodily injury.**

75 Pa. C.S.A. § 1734.



Because there is an internal cross reference and the two statutes apply to the same subject matter, section 1734 is to be read *in pari materia* with Section 1731.

*Lewis v. Erie Ins. Exchange*, 568 Pa. 105, 117, 793 A.2d 143, 149 (2002). Section 1731, in relevant part, states:

**§ 1731 Availability, scope and amount of coverage**

**(a) Mandatory offering.** —No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless ... underinsured motorist coverages are offered therein or supplemental thereto in amounts as provided in section 1734 (relating to request for lower limits of coverage). Purchase of uninsured motorist and underinsured motorist coverages is optional.

**(c) Underinsured motorist coverage.** —Underinsured motorist coverage shall provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages therefor from owners or operators of underinsured motor vehicles. The named insured shall be informed that he may reject underinsured motorist coverage ....

75 Pa. C.S.A. § 1731(a) and (c).

Even though UM and UIM benefits are optional, an insurer cannot issue a policy unless it provides UM and UIM coverage equal to limits of liability for bodily injury.<sup>4</sup>

Because an applicant can choose to waive these benefits and thereby receive a lower premium, the insurer is statutorily required to obtain a waiver or rejection form from the applicant if the applicant chooses to not purchase these optional benefits. The

language for the rejection forms for these benefits is set forth in 75 Pa. C.S.A. § 1731(b) and (c).<sup>5</sup> In the event the insurer fails to produce a valid waiver or rejection form for

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<sup>4</sup> 75 Pa. C.S.A. §§ 1731 and 1734. The MVFRL further provides that an insurer may offer coverages in amounts higher than those required. 75 Pa. C.S.A. § 1736.

<sup>5</sup> The UIM rejection form provides as follows:

REJECTION OF UNDERINSURED MOTORIST PROTECTION

uninsured or underinsured coverage, or both, as the case may be, an insured is entitled to coverage equal to the bodily injury liability limits. 75 Pa. C.S.A. § 1731(c)(1).

Unlike Section 1731 of the MVFRL, which contains stringent requirements for rejecting UM and UIM coverage, the following Pennsylvania appellate decisions demonstrate that the strict formalities found in section 1731 have not been applied to section 1734 election of lower limits.

In *Lewis v. Erie Insurance Exchange*, 568 Pa. 105, 793 A.2d 143 (2002), the Court held that 1731's "technical and remedial prescriptions" were only applicable in situations where UM/UIM was waived/rejected, and they did not apply to requests for reduction in UM/UIM coverage under section 1734. In that case the insured requested bodily injury coverage of \$500,000.00 and lower UM/UIM coverage in the amount of \$50,000.00.

The form was later modified by the insurer. It consisted of a single page which contained divided sections outlined in box style pertaining to UM and UIM respectively

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By signing this waiver I am rejecting underinsured motorist coverage under this policy, for myself and all relatives residing in my household. Underinsured coverage protects me and relatives living in my household for losses and damages suffered if injury is caused by the negligence of a driver who does not have enough insurance to pay for all losses and damages. I knowingly and voluntarily reject this coverage.

Signature of First Named Insured  
Date

(c.1) Form of waiver.—Insurers shall print the rejection forms required by subsections (b) and (c) on separate sheets in prominent type and location. The forms must be signed by the first named insured and dated to be valid. The signatures on the forms may be witnessed by an insurance agent or broker. Any rejection form that does not specifically comply with this section is void. If the insurer fails to produce a valid rejection form, uninsured or underinsured coverage, or both, as the case may be, under that policy shall be equal to the bodily injury liability limits. On policies in which either uninsured or underinsured coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. Any person who executes a waiver under subsection (b) or (c) shall be precluded from claiming liability of any person based upon inadequate information.

and broken down into whether there would be waiver or rejection of UM/UIM, reduction of UM/UIM coverage limits and rejection of stacked limits. The insured only signed the form where it stated "Reduced Limits of UM/UIM Motorist Protection" which was for \$50,000.00 but he did not sign the other boxes for rejection of coverage or rejection of stacked limits of coverage. Following a motor vehicle accident, the insured contended that the form was deficient as it did not conform to section 1731 which required the waiver/rejection for UM and UIM to be printed on separate pages. The insured claimed that he was entitled to \$500,000.00, the same as the liability coverage due to the deficient form.

The Court rejected the insured's claim reasoning in part that:

[A]lthough the General Assembly clearly designed both Sections 1731 and 1734 as relating to UM/UIM coverage, it is just as plain that it directed each provision to a different form of election: Section 1731(c.1) to outright waiver/rejection of coverage, and Section 1734 to selection of specific limits. Section 1731's cross-reference to Section 1734 makes this distinction explicit in describing Section 1734 as relating to request for lower limits of coverage.

*Id.* 568 Pa. at 122, 793 A.2d at 143 (citing 75 Pa.C.S. § 1735(a)).

The Court continued by saying, "[A]lthough we view the statutes as *in pari materia* in a broad sense, the material difference in their subject matter allows for differential treatment to the extent that this would appear to be legislatively intended."

*Id.* (citing 1 Pa.C.S. § 1932 (prescribing for particularized treatment concerning statutes deemed *in pari materia* only where related to the same (or same class of) persons or things)).

In *Smith v. Hartford Ins. Co.*, 849 A.2d 277 (Pa. Super. 2004) *app. den.* 581 Pa. 708, 867 A.2d 524 (2005), the Superior Court held that a section 1731 total rejection of UM/UIM coverage, remains valid even when coverage is increased. In that case, the

insured purchased an automobile policy which included \$300,000 of UM and UIM coverage. A few months later, the insured executed a waiver of UIM coverage on a separate piece of paper. No subsequent rejection forms were ever given to the insured from the insurer although the record showed that the renewal notices provided to the insured contained a notice stating that the policy provided no uninsured or underinsured coverage.

A few years later, the insured increased liability coverage when he purchased an umbrella policy. A few years after that, the insured and his wife were in an automobile accident with an underinsured motorist that caused serious injuries to the wife.

After the insurer denied coverage based on the rejection form signed by her husband, the wife brought suit on the theory that the rejection form supplied by the insurer was not in compliance with statutory mandates and were void. The trial court found that the insured's rejection of coverage complied with the statutory requirements of section 1731 of the MVFRL. The trial court *sua sponte* found, however, that when the insured increased the liability limits, the insured had "purchased" a new insurance policy requiring the insurer to supply new forms.

Although the Superior Court agreed with the trial court's decision that the rejection of coverage was in accordance with the MVFRL, it rejected the trial court's holding that the increased bodily injury limits was a "purchase" of a new policy requiring a waiver. The Superior Court explained that section 1734 requires the insured to affirmatively request the lower amount in writing and that unless such a request is made, the default for the UM/UIM coverage is the bodily injury limits. *Smith* 849 A.2d at 281.

The Court in applying section 1791 found that the applicant for insurance had been informed of the choices available and the insurer had no other obligation to provide any further type of notice.<sup>6</sup> The Court stated:

The General Assembly in writing this [section 1791] certainly knew that the purchase of an insurance policy was not a lifetime contract. Policies are renewed, vehicles are bought and sold, amounts of coverage change. Yet, in spite of this knowledge, the General Assembly has specifically stated that once the applicant has purchased the policy and been informed of the choices available, no other notice or rejection shall be required.

*Id.* At 280.

In *Blood v. Old Guard Ins. Co.*, 595 Pa. 151, 934 A.2d 1218 (2007), the Pennsylvania Supreme Court held that as a matter of first impression that the named insured's request for reduction in liability coverage did not affect previous election of UIM limits for less than liability limits. In that case, the original policy, when purchased in 1986,

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<sup>6</sup> Section 1791 provides in pertinent part:

It shall be presumed that the insured has been advised of the benefits and limits available under this chapter provided the following notice in bold print of at least ten-point type is given to the applicant at the time of application for original coverage, and no other notice or rejection shall be required:

**IMPORTANT NOTICE**

Insurance companies operating in the Commonwealth of Pennsylvania are required by law to make available for purchase the following benefits for you, your spouse or other relatives or minors in your custody or in the custody of your relatives, residing in your household, occupants of your motor vehicle or persons struck by your motor vehicle:

(6) Uninsured, underinsured and bodily injury liability coverage up to at least \$100,000 because of injury to one person in any one accident and up to at least \$300,000 because of injury to two or more persons in any one accident or, at the option of the insurer, up to at least \$300,000 in a single limit for these coverages, except for policies issued under the Assigned Risk Plan. Also, at least \$5,000 for damage to property of others in any one accident.

Additionally, insurers may offer higher benefit levels than those enumerated above as well as additional benefits. However, an insured may elect to purchase lower benefit levels than those enumerated above. Your signature on this notice or your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected.

If you have any questions or you do not understand all of the various options available to you, contact your agent or company.

If you do not understand any of the provisions contained in this notice, contact your agent or company before you sign.

75 Pa.C.S. § 1791.

was for \$500,000.00 liability coverage. The insured elected to reduce the UM/UIM coverage to only \$35,000.00 but with stacking for their three vehicles. Subsequently, in 2000, the insured elected to reduce the liability coverage to \$300,000.00. A few months later, the son of the insured was injured in a motor vehicle accident in which he was a passenger and suffered serious injuries. The driver of the vehicle at fault was underinsured.

The insurer offered \$105,000.00 to the insured representing the \$35,000.00 elected multiplied by the three vehicles. The insured claimed \$900,000.00 representing the liability limits multiplied by three.

The Court looked to the plain meaning of the statute and concluded that the language in section 1734 is plain, and the intent of the Pennsylvania General Assembly was clear.

By its terms a named insured may lower her statutorily provided UIM coverage limits by requesting in writing of her insurer to do so. The insurance company's obligation to *issue* a policy with UM/UIM coverage in an amount equal to the policy's bodily injury liability coverage is not relieved unless it has received such a written request.

*Blood*, 595 Pa. at 164-65, 934 A.2d at 1226. The Court could find no authority that the insurer was required to re-comply with the relevant sections of the MVFRL under the facts presented.

McNear argues that the Supreme Court's decision in *Barnard* changes the prior analysis concerning section 1734. Specifically, McNear contends that section 1738's meaning of the word "purchase" should be imported to section 1731's use of the words "issuance and delivery" of a policy which is to be read *in pari materia* with section 1734.

In *Barnard* the insured purchased an auto policy for two vehicles and purchased UIM coverage in the amount of \$50,000 per vehicle but waived stacking of her UIM coverage limits. Two years later, the insured increased her UIM limits to \$100,000.00. After being involved in a motor vehicle accident with an underinsured motorist, the insured sought stacked benefits in the amount of \$200,000.00 arguing that the insurer was required to provide her with a new stacking waiver when she increased her UIM coverage limits.

The question, as certified from the United States Court of Appeals Third Circuit to the Pennsylvania Supreme Court, was whether an increase to the limits of underinsured motorist coverage for multiple vehicles that are insured under an existing policy constitutes a "purchase" for purposes of Subsection 1738(c) of the MVFRL. The Court held that an increase in limits of UIM coverage on each vehicle covered by the policy was a "purchase" entitling the insured to a new stacking waiver.

Section 1738 of the MVFRL governs stacking of UM/UIM coverage.<sup>7</sup> Like section 1731, stacking is optional. Also like 1731, there are strict statutory requirements to be followed if the insured wishes to waive or reject stacking.

McNear relies heavily upon the analysis found in *Barnard* regarding the word "purchase" and what constitutes a "purchase" under section 1738(c) of the MVFRL requiring an insurer to provide renewed stacking waivers. This section states:

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<sup>7</sup> Stacking is part of the legislative scheme involving UIM and UM benefits. Stacking relates to the ability to add coverages from other vehicles and/or different policies to provide a greater amount of coverage available under any one vehicle or policy." *Franks* n. 1 (quoting *Everhart v. PMA Ins. Group*, 595 Pa. 172, 938 A.2d 301, 302 (2007) (Pa. 2023). The requirement that an insurer must obtain a signed waiver or rejection for stacking as set forth in 75 Pa. C.S.A. § 1738(d), is similar to the requirement for rejecting or waiving UM and UIM coverage found in section 1731. The coverage will be stacked if the insurer fails to obtain a stacking waiver and the coverage available to an insured is the sum of the limits for each motor vehicle. 75 Pa. C.S.A. § 1738.

(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) [waiver]. The premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

75 Pa. C.S.A. § 1738(c).

The Court in *Barnard* found the term “purchase” to be unambiguous and applied its plain meaning, “the act or an instance of buying,” to the facts of the case finding that a “purchase” does not pertain to just the purchase of the initial policy. *Id.*, 216 A.3d at 1051. The Court found that adding a third vehicle to an existing policy constituted a “purchase” and required a new stacking waiver under section 1738.<sup>8</sup>

McNear invites the Court to find no difference between the language used in section 1731 and that used in 1738 regarding the words “issuance” and “purchase” respectively. McNear contends that “[t]he *purchase* of additional UM/UIM coverage is a necessary pre-requisite to the *issuance* of a policy with these additional coverages. One cannot occur without the other...[A]n insurer would never *issue* a policy with additional coverages unless and until those additional coverages have been purchased.” (McNear Reply Brief, p. 7). While compelling, it is not wholly convincing.

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<sup>8</sup> *Barnard* found additional support in its decision based on *Sackett v. Nationwide*, 919 A.2d 194 (Pa. 2007) (“*Sackett I*”) where the Supreme Court interpreted the MVFRL to require the insurer to obtain new waivers of stacking upon the “purchase” and “issuance” of additional UM/UIM coverage when an insured sought an increase of UM/UIM coverage limits under an existing policy. The Court’s reasoning in *Sackett I* was that the insureds could not have purchased UIM stacking coverage for a third vehicle when they made their initial purchase which was for a policy covering two vehicles. Once the third vehicle was added and UIM coverage was purchased for the third vehicle, this changed the aggregate amount of UIM coverage and entitled the insureds to receive a new stacking waiver.

Most recently, the Pennsylvania Supreme Court in *Franks v. State Farm Mutual Automobile Ins. Co.* 2023 WL 2993881 (Pa. 2023), held that, as a matter of first impression, that removal of a vehicle from an existing policy was not a “purchase” requiring a renewed express waiver of stacked coverage.



Not too long ago, the Third Circuit in *Geist v. State Farm Mutual Automobile Insurance Co.*, 49 F.4<sup>th</sup> 861 3d Cir. 2022) addressed the question that is presently before this Court. The Court finds the cogent analysis and decision in *Geist* persuasive.<sup>9</sup>

The court in *Geist* held that (1) an insurer was not required to seek written election from the insured of UIM benefits coverage limits when the insured added a vehicle to an existing policy, and (2) the issuance of the policy, not the purchase of coverage, triggered the insurer's duty to seek election from the insured of UIM coverage limits.

In that case, the insureds had obtained a policy in 2010 for two vehicles with liability coverage of \$100,000.00 per person and \$300,000.00 per accident for bodily injuries. Reduced UIM benefits of up to \$50,000.00 per person and \$100,000.00 per accident were selected. After the initial purchase of the policy, a second vehicle was removed in 2011 and a third vehicle was added in February 2013. No new election for lower UIM coverage limits below bodily injury coverage limits was executed. The daughter of the insured was seriously injured by an underinsured motorist and sought \$200,000.00 in UIM benefits from her parents' insurer claiming that the insurer failed to obtain a new waiver to provide UIM coverage limit below the bodily injury coverage limit when her father added a new vehicle onto the family's policy.

*Geist* argued that section 1734 requires an insurer to seek a new written election whenever the insured seeks to purchase additional coverage whether or not the insurer would provide that coverage as part of a new or existing policy. The Third Circuit rejected this argument explaining that sections 1731 and 1734 establishes that it is the issuance

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<sup>9</sup> See also, *Alcedo v. State Farm Mutual Auto Ins.*, 391 F. Supp. 452 (U.S. District Court, E.D. Pa.), a memorandum opinion holding that the addition of vehicles to a policy did not require an insurer to obtain a new writing signing down UIM limits.

of a policy, not the purchase of coverage, that triggers the duty to seek an election of UIM coverage limits. The Court stated that section 1731 triggers an obligation of an insurer to provide UIM coverage whereas section 1734 provides a process that governs how much coverage the insurer must provide when it “*issue[s]* a policy.” *Id.* at 865 (citing *Blood*, 934 A.2d at 1226; *Lewis*, 793 A.2d at 149).

The Court further found unpersuasive Geist’s reliance on the Pennsylvania Supreme Court’s decision in *Barnard*. The language in section 1738 specifically states that “[e]ach 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.” *Id.* at 865-866. Section 1731(a) in contrast, provides that it is the “delivery” or “issuance” for delivery of a policy that triggers the opportunity to waive UIM coverage limits and that section 1734 allows the insured to obtain lower limits through a written request.

The Court concluded that it could not “ignore the legislature’s decision to tie the duty to seek an election of UIM coverage limits to the issuance of a policy rather than the purchase of coverage.” *Id.* at 866. Because UIM coverage of \$50,000.00 was elected when the policy was issued, the Court found that no further amount could be recovered.

This Court is likewise challenged to find that section 1738’s use of the word “purchase” should be read into sections 1734 and 1731 where such language plainly does not appear and where the courts have not found that 1734 should be treated as stringently as section 1731. McNear argues, however, that section 1738 should be read *in pari materia* with sections 1731 and 1734.

As recognized by the Court in *Lewis*, there is an explicit distinction in the language used by the General Assembly thereby allowing for differential treatment. The failure of an insured to obtain a rejection form or failure to comply with the precise language found in sections 1731 and 1738 cannot be equated with section 1734 which places the obligation on the insured who “may request in writing the issuance of coverages under section 1731 ... in amounts equal to or less than the limits of liability for bodily injury.” 75 Pa. C.S.A. § 1734.

Furthermore, the ***purchase*** of UM/UIM coverage essentially occurs when the insured elects not to reject UM/UIM benefits because the amount of UM/UIM coverage is automatically equal to the limits of liability for bodily injury by statute. The policy may be ***issued***, however, with a lesser amount of UM/UIM coverage but only if the insured requests it in writing.<sup>10</sup>

Additionally, it is important to note that section 1791 regarding the “Important Notice” was irrelevant to the Court in *Barnard* because the 1791 Notice does not discuss stacking. The Court stated that, “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.” *Barnard* 654 Pa. at 616, 216 A.3d at 1053.

In this case, the section 1791 Notice was provided to McNear as part of the six-page “Personal Auto Insurance Supplement A.” (See Exhibit C - Stipulation of Facts). The Notice contains six paragraphs which detail all of the benefits that the insurer is

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<sup>10</sup> If the statutory language is clear and unambiguous in setting forth the intent of the General Assembly, then “we cannot disregard the letter of the statute under the pretext of pursuing its spirit. In this vein, we should not insert words into [a statute] that are plainly not there.” *Goodwin v. Goodwin*, 280 A.3d 937, 944-45 (Pa. 2022).

required to make available for purchase. After paragraph (6), the following paragraph appears:

Additionally, Insurers may offer higher benefit levels than those enumerated above as well as additional benefits. However, an insured may elect to purchase lower benefit levels than those enumerated above. Your signature on this notice or your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected.

The Declaration Pages, provided as part of the Stipulated Facts, show that each time McNear removed or added a vehicle McNear continued to pay premiums for the same amount of coverage from the time of the policy's inception up until the 2018 motor vehicle accident. Having provided notice of available limits under section 1791 and having provided McNear with the forms pursuant to 1731 and 1734 when the policy was initially purchased, Goodville had no further obligation to provide any additional notice regarding the amount of UIM coverage when McNear added another vehicle to the policy.

Summary Judgment will be entered in favor of Goodville and will be denied as to McNear as set forth in the following Order: