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Insurer's Failure To Obtain Stacking Waiver On Added Vehicle Results In Stacked Benefits, Pa. Judge Rules

A Pennsylvania state court judge has decided that a driver was entitled to \$400,000 in stacked coverage because the driver did not sign stacking waivers when adding the most recent vehicles to his policy.

In *Newhook v. Erie Ins. Exchange* (Monroe C.P., May 30, 2017), Monroe County Court of Common Pleas Judge David J. Williamson granted declaratory relief sought by Kenneth Newhook when he filed a complaint against Erie seeking entitlement to the stacked coverage. Newhook was involved in a rear end accident when he was struck by a drunk driver, and he alleged he sustained severe injuries in the collision.

Erie paid \$100,000 in single-vehicle coverage but denied Newhook's claim for \$300,000 in additional stacking benefits based on three other vehicles listed on the policy. Newhook neither selected nor waived stacking when adding the most recent vehicles, Williamson noted in his opinion.

Williamson declined to follow Erie's argument that it had no duty to obtain new stacking waivers for the recently added vehicles after the insured initially declined stacking on the former vehicles:

It appears that the existing case law varies regarding availability of stacked UM/UIM coverage when it is not selected by an insured, but also not specifically waived in writing . . . From a pure public policy standpoint, and in conformity with the intent of Section 1738 of the [Motor Vehicle Financial Responsibility Law], it would seem that when more benefits are available, a written waiver of those benefits should be given . . . Clearly, a significant change was made when the Ford Fusion was added to the policy. No stop-gap insurance was needed because Erie was informed and issued a new declaration and also renewed the insurance policy prior to the accident. No new waiver was executed.

Williamson ruled in favor of stacking despite the fact that the vehicle in the accident, a Ford Fusion, was a replacement for an automobile on which stacking had originally been rejected. The judge ruled that acquisition of the new cars was akin to the purchase of a new vehicle, on which a stacking waiver would be required.



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