

# Pennsylvania UM/UIIM Update 2018

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**Brooks R. Foland, Esquire**

Marshall, Dennehey, Warner, Coleman & Goggin  
100 Corporate Center Drive, Suite 201, Camp Hill, PA 17011  
717.651.3714 | [brfoland@mdwcg.com](mailto:brfoland@mdwcg.com)

# Bad Timing

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- Eberhardinger v. City of York, 2018 U.S. Dist. LEXIS 158447 (M.D. Pa. Sept. 18, 2018)
  - Woman riding in her own car as a passenger was hit by bullets fired by police during a high-speed chase.
  - Woman made PIP and UIM claims under her own auto policy
  - The Carrier denied the UIM claim

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- The federal court agreed with the carrier that being hit by bullets did not arise of the "maintenance or use of a motor vehicle."
  - Though the bullets came out of the guns of the good guys, the Court seemed to focus on the intervening acts of the bad guys, which forced police to fire

# Watch Where You Sign!

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- Bielec v Am. Int'l Grp., Inc., 2017 Pa. Super. Unpub. LEXIS 4752 (Pa. Super., Dec. 26, 2017)
  - Verizon intended to reject UM/UIM coverage under its commercial auto policy
  - The rejection form contained the precise language required by 1731 of the MVFRL, but the representative of Verizon did NOT sign immediately underneath the rejection language. Rather, she signed under additional language on the form dealing with policy renewals.
  - The Court ruled that the form, as executed, did not comply with the law, even though Verizon had also ticked a click-box next to the waiver language

# Bielec Continued

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- Superior Court did not reach second basis for invalidating the form—on public policy grounds.
- The trial court had ruled that the form was void as against public policy because the commercial insured did not advise its employees of its decision to reject UM/UIM coverage, thereby denying them the ability to purchase their own UM/UIM coverage.

# More Is Sometimes Okay: But Beware

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- Elizaire v The Travelers Companies, 2017 U.S. Dist. LEXIS 206150 (E.D. Pa., December 14, 2017)
- Court held that two explanatory paragraphs above the required 1731 UM/UIM waiver language did NOT invalidate the form because the added language was not inconsistent with purpose of 1731
- BUT the Court cautioned that "it is best practice for insurance companies not to supplement the required language of 1731 even if they believe such language might provide additional clarity to the statutory rejection language."
- Just follow the statute!

# Equal Treatment: If you pay for it

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- Rarick v Federated Serv. Ins. Co., 2018 U.S. Dist. LEXIS 114817 (E.D. Pa., July 10, 2018)
  - Employer rejected UM/UIM coverage for its employees but purchased UM/UIM coverage for its officers, directors, owners and their family members.
  - Following a PA Superior Court from 2016, the federal court upheld the two-tiered system for UM/UIM and ruled that the minor deviations in the rejection language was not inconsistent with 1731 and did not create confusion.

# Sackett Lives!

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- Newhook v Erie Ins. Exch., 2018 Pa. Super. Unpub. LEXIS 1303 (Pa. Super., April 25, 2018)
  - Erie issued policy in 2007 with 3 vehicles listed on the policy
  - Insured Newhook waived stacking at the time of application
  - From 2007 to 2013, Newhook added and removed several vehicles to and from the policy
  - When he added a vehicle in 2012, he executed a new stacking waiver
  - He added 2 more vehicles later, but did not execute new stacking waivers.
  - Rather, amended declaration sheets were issued when these two new vehicles were added
  - Newhook was involved in a MVA in 2013 and suffered serious injuries.



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- Newhook, cont.

- Newhook sought stacked UIM benefits from Erie, despite the previous rejections of stacking
- The PA Superior Court applied Bumbarger in holding that the new vehicles were added by endorsement, as evidenced by the issuance of amended declaration sheets.
- In a footnote, the Court noted: "The issuance of an[] amended declarations page is a policy endorsement."
- A petition for allowance of appeal is pending.

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- Barnard v Travelers Home & Marine Ins. Co., 289 F. Supp. 3d 633 (E.D. Pa. 2018)
    - In 2007, Barnard purchased an insurance policy from Travelers
    - Barnard purchased 50K in UM/UIM coverage and rejected stacking
    - Years later, Barnard increased her UM/UIM coverage from 50K to 100K, but she did not sign a new rejection of stacking.
    - The District Court recognized this as a case of first impression: Applying 1738 the Court ruled that the increase of UM/UIM limits amounted to a "new purchase of coverage" thereby requiring the execution of new stacking waivers.
    - The case is pending appeal before the Third Circuit Court of Appeals.

# Lower Limits: Lower Requirements

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- Farmland Mut. Ins. Co. v Sechrist, 2017 U.S. Dist. LEXIS 213618 (M.D. Pa., December 29, 2017)
  - In an application for commercial auto policy the insured selected 1M in BI coverage and 35K in UM/UIM coverage.
  - But the UIM selection form did not specify the desired limit of 35K.
  - The Court ruled that the application itself met the minimal requirements of Section 1734.
  - The case is pending on appeal before the Third Circuit Court of Appeals.

# Household Vehicle Exclusion

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- Toner v GEICO Ins. Co., 2018 U.S. Dist. LEXIS 45160 (E.D. Pa. 2018)
  - Toner was injured while riding his leased motorcycle
  - Toner made a claim for UIM benefits under his parents' auto policy with GEICO
  - The Court applied the HH vehicle exclusion to preclude UIM benefits under the GEICO policy
  - No appeal was filed.

# Regular Use/Non-Owned Vehicle Exclusion

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- Reeves v. Travelers Cos., 296 F. Supp. 3d 687 (E.D. Pa. 2017)
  - Reeves resided with his mother, but worked for the City of Philadelphia
  - Reeves had access to several work vehicles to perform his work each day
  - Reeves was injured while riding in a work vehicle and made a claim for UIM benefits under the policy issued by Travelers to his mother.
  - The Court upheld the regular use exclusion in the policy, because Reeves regularly had access to the fleet of vehicles and used them 90% of the time.
  - The Court also denied the claim for bad faith, because Travelers had at least a reasonable basis to deny the claim based on the exclusion in the policy.

# SOL for UM/UIM Claims

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- Erie Ins. Exch. V Bristol, 174 A.3d 578 (Pa. 2017)
  - Overruling 30+ years of Superior Court case law, the PA Supreme Court held that the SOL on a claim for UM benefits does not begin to run until the insurance contract has been breached, that is:
    - ✦ When the claim is denied; or
    - ✦ The insurer refuses a demand for arbitration.

# More SOL

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- Legos v Travelers Casualty Company, Case 3:16-cv-01917 (M.D. Pa., Oct. 11, 2018)
  - Applies decision in Bristol to UIM claims for 2003 accident, though Travelers had argued that the 4-year SOL commenced on the date that the insured signed the release in favor of the third-party tortfeasor.
  - The Court disagreed with Travelers, ruling that the 4-year SOL did not expire in 2016—4 years after the insured had signed the release in the third-party case, but rather didn't even start to run until 2016 when Travelers closed its file and essentially denied the claim.
  - But for this case, the insured would have had until 2020 to file suit against the insurer—17 years post-accident.

# Venue

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- Pisanchyn v Progressive Direct Ins. Co., 2018 U.S. Dist. LEXIS 129616 (M.D. Pa., August 2, 2018)
  - Insured filed suit against carrier in Lackawanna County and carrier removed case to federal court
  - The insured moved to remand, contending that the removal violated the policy's forum selection clause.
  - The Court denied the motion to remand, holding that while the insured could choose to file suit in Lackawanna County (where the insured resides), the insurer was not precluded from removing the case to federal court.



# Questions and Answers

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THANK YOU!

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