



Testimony on SB 676

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INTRODUCTION

Thank you, Chairpersons DiSanto and Street, and members of the Senate Banking and Insurance Committee for hosting this hearing on stacking auto insurance benefits, an issue that impacts all insured drivers in the Commonwealth. We understand the Committee's interest in stacking in light of Senator Pittman's proposed legislation SB 676. We have seen numerous court decisions rendered in the last several years that significantly impact the scope and availability of stacked benefits.

The decision whether to stack uninsured motorist/underinsured motorist benefits¹ ("UM/UIM") is one of several decisions an individual makes when purchasing an auto insurance policy in Pennsylvania. In addition to selecting bodily injury and property damage liability limits, an individual must decide whether to purchase UM/UIM coverage at all, at what limits to purchase UM/UIM coverage² and whether to stack UM/UIM benefits. In addition to these decisions an individual must consider whether to purchase full-tort or limited-tort coverage. In the event an individual purchases UM/UIM coverage, that individual defaults to more expensive, stacked UM/UIM coverage, unless the individual submits a statutorily prescribed stacking waiver form to the insurance company writing the policy.

UM/UIM benefits may be stacked within a single policy (intra-policy stacking) or across two or more policies (inter-policy stacking). For instance, in an intra-policy stacking scenario, an insured with two vehicles and \$15,000 in UM/UIM benefits, may have access to \$30,000 in benefits if in an accident with an underinsured or uninsured motorist. To the extent that an insured had a second policy on an owned motorcycle, for example, regardless of whether that policy is written by the same insurance company or an entirely unrelated insurance company, the insured may have access to \$45,000 in benefits if we assume the motorcycle policy also has \$15,000 in UM/UIM benefits.

This testimony seeks to assist the committee in its review of stacking by providing a factual overview of the concept in addition to a summary of the current legal application of stacking. The testimony also provides Department-compiled data on UM/UIM coverage and the prevalence of stacking. The Department could provide additional data as requested; however, we would need reasonable time to do so to collect the data from carriers and ensure an accurate analysis. As such, in the below we provide currently available data that will generally address the committee's request.

¹ UM/UIM coverage applies when an insured driver is in an accident with an at-fault driver that either has no liability insurance coverage or has liability coverage with limits that are insufficient to cover the insured's damages.

² 75 Pa. C.S. § 1734 limits the amount of UM/UIM coverage available to an insured to no more than the bodily injury limits purchased in the policy.

LEGAL SCAN

Legal disputes involving the stacking of UM/UIM benefits are not new to the judiciary of this Commonwealth. Since at least the adoption of the first Uninsured Motorist Act there have been questions of law regarding whether, to what extent, and in what manner, may UM/UIM benefits be stacked. The Courts of this Commonwealth have developed a distinct jurisprudence when deciding questions about UM/UIM stacking. This jurisprudence has evolved overtime and has embodied two distinct policy considerations. First, the courts have attempted to maximize the recovery of policyholders in the event of an accident involving an uninsured or underinsured motorist. This policy consideration was made in recognition of the remedial purpose of UM/UIM benefits. Second, the courts have focused on whether an insured has received the benefits outlined in their insurance policy and whether the stacking of UM/UIM benefits would entitle an insured to gratis coverage. This policy consideration recognizes that UM/UIM benefits are still part of a contract of insurance to which ordinary contract and insurance law principles apply. Given the tension between these two competing policy goals the courts' decisions on stacking have oscillated between the two, on occasion taking sides of pro and anti-stacking depending on the specific facts and considerations of the case.

The law surrounding the stacking of UM/UIM benefits historically has been shaped by the tension between these two policy goals. Subtle variations in facts of particular cases have created a vast body of decisional case law. The current controversy in the law of stacking centers around two specific issues. First, in the *Gallagher*³ case the question was raised whether, and to what extent, an insurer may exclude stacked benefits for vehicles in an insured's household that were not insured under the specific policy at issue. The Supreme Court held in that case that an insurer could not exclude stacked benefits for vehicles in the insured's household. However, this ruling left many questions open for further consideration and has brought about some of the policy concerns being discussed today. The second issue, which is currently in front of the Supreme Court of Pennsylvania, is the issue raised by the United States District Court in *Donovan v. State Farm Mut. Ins. Co.*⁴. This case raises the question as to whether the statutory stacking waiver contained in the Motor Vehicle Financial Responsibility Law ("MVFRL"; 75 Pa. C.S. § 1701 *et seq.*) is sufficient to waive both inter-policy and intra-policy stacking of UM/UIM benefits.

Both issues currently being decided in the context of the law of stacking implicate, to a significant degree, the competing policy goals that our courts have wrestled with for decades. Unquestionably, the purpose of UM/UIM stacking is to financially assist an injured insured to ensure that citizens of this Commonwealth are afforded the greatest possible recovery. It is equally clear, however, that the original

³ *Gallagher v. GEICO Indem. Co.*, 201 A.3d 131 (Pa. 2019).



intention of the MVFRL was to contain costs as a result of an accident involving an uninsured or underinsured driver. This additionally enshrined in our system a series of consumer choices that allows a consumer to accept or reject UM/UIM benefits and to receive the cost benefits of doing so. It is the conflict between these two policy goals that has and will continue to shape future court decisions regarding the stacking of UM/UIM benefits.

It should also be noted, however, that the judiciary of this Commonwealth has also recognized that there are limits to the judiciary's ability to implement these policy goals. Ultimately, our current system of stacking is a matter of legislative prerogative. The judiciary has strived to interpret the MVFRL and its predecessor statutes with an eye to implementing the policies of the General Assembly. Nevertheless, the courts, when faced with plain statutory language of the MVFRL are not capable of changing the law. This was the situation in the *Craley*⁴ case and is currently being contemplated in the *Donovan*⁵ case. Both cases involved questions of statutory interpretation and the plain language of the MVFRL. Stated in an overly simple manner, the primary issue the courts were faced with in those cases were a result of one word in the MVFRL that is not pluralized. While seemingly innocuous, the courts have found that this single omission in the statutory language may limit insureds ability to waive an entire class of stacking.⁶ As a coequal branch of government, the courts of this Commonwealth have implored the General Assembly to consider these issues and correct them if necessary.

UM/UIM DATA

The Department has data from 2015 in response to a data call issued in 2016 that provides reliable, albeit limited, data on UM/UIM coverage and the prevalence of stacking. The below information also includes 2018 data provided by a national statistical rating organization. This data provides the following estimates of the percentages of personal vehicles with stacked and non-stacked UM/UIM coverage:

- Approx. 53% of personal vehicles statewide, are insured with stacked UM/UIM coverage. We estimate this to represent approx. 4.8 million personal vehicles in Pennsylvania.
- Approx. 38% of personal vehicles statewide, are insured with non-stacked UM/UIM coverage. We estimate this to represent approx. 3.4 million personal vehicles in Pennsylvania.
- Approx. 9% of personal vehicles statewide, reject UM/UIM coverage entirely. We estimate this to represent approx. 800,000 personal vehicles in Pennsylvania.

⁴ *Craley v. State Farm Fire and Cas. Co.*, 895 A.2d 530 (Pa. 2006).

⁵ *Donovan v. State Farm Mut. Ins. Co.*, 392 F.Supp.3d 545 (E.D. Pa. 2019).

⁶ The Courts' rulings (including the *Donovan* case that is currently before the Supreme Court) suggest an inability to waive inter-policy stacking, including when different carriers administer the different policies providing benefits for the insured.



As Philadelphia is the Commonwealth's largest city and county (by population), we also offer the following estimates specific to Philadelphia:

- Approx. 41% of personal vehicles in Philadelphia are insured with stacked UM/UIM coverage. We estimate this to represent approx. 290,000 personal vehicles in Philadelphia.
- Approx. 23% of personal vehicles in Philadelphia are insured with non-stacked UM/UIM coverage. We estimate this to represent approx. 160,000 personal vehicles in Philadelphia.
- Approx. 36% of personal vehicles in Philadelphia reject UM/UIM coverage entirely. We estimate this to represent approx. 250,000 personal vehicles in Philadelphia.

In addition, this data indicates that approximately 5 percent of insured personal vehicles (approx. 450,000 such vehicles) are insured at the current minimum limits of \$15,000/\$30,000/\$5,000⁷ and 12 percent of insured personal vehicles (approx. 1.1 million such vehicles) are insured at/below limits of \$25,000/\$50,000/\$15,000. For comparison purposes, we believe that approximately 37 percent of personal vehicles (approx. 260,000 such vehicles) in Philadelphia are insured at/below limits of \$25,000/\$50,000/\$15,000. The data generally shows that a sizeable number of insureds stack UM/UIM benefits. The data includes unintentional stacking where a stacking waiver was simply not returned, defaulting the insured to stacked coverage. The Department cannot speak to whether an insured would forgo stacking and instead purchase greater limits of UM/UIM coverage if not limited to the current UM/UIM limits, which may not exceed bodily injury limits. Again, it is important to note that the only way to purchase UM/UIM limits that exceed bodily injury limits under today's law is by stacking policy benefits.

SUMMARY

This testimony has defined stacking, provided a brief legal history of stacking, and highlighted currently available data relevant to the committee's review of stacking. The Department was also asked whether stacking is a clear way to buy more UM/UIM than bodily injury coverage or if there is a more consumer-friendly system to accomplish that potential goal.

The Department's primary mission is the protection of the insurance-buying public. That mission manifests itself in how we regulate company solvency, producer licensing, rates and policy forms, and market conduct. The protection of consumers includes the ability of consumers to understand the choices

⁷ \$15,000 reflects bodily injury liability coverage per person. \$30,000 reflects bodily injury liability coverage in the aggregate. \$5,000 reflects property damage coverage.



they have in purchasing the policy that is right for them and understanding the limits of that policy. The Department outlined above the many decisions that an individual faces when purchasing auto insurance. Those decisions exist at the time of purchase and do not include pre-decisional questions an individual may consider, including whether one's credit score, education level, or occupation may factor into one's auto insurance premium (permissible under Pennsylvania law), and are critical to understand if an individual is to make a most informed decision.

Thus, to aid the committee in its review of stacking and whether the current approach to stacking is an appropriate strategy to determine UM/UIM coverage parameters, we offer you the following observations:

- A stacked policy is generally more expensive than a policy that waives stacking and, in turn, generally offers a higher level of UM/UIM benefits.
- To the extent insurance premiums increase, it is reasonable to assume that some consumers may reduce coverage limits and/or potentially waive UM/UIM coverage entirely.
- Stacking allows an insured to purchase more UM/UIM coverage than is otherwise permissible under the current statute, which caps limits at the bodily injury limits purchased by the insured.
- Detangling UM/UIM coverage from bodily injury limits would allow an insured to buy greater UM/UIM limits than bodily injury limits, assuming that insurance companies are required to offer coverage at substantially high benefit levels.
- The current legal disputes cause risk uncertainty for insurers who may not have priced policies for exposures related to possible intra-policy stacking.
- A system that allows an insured to purchase as much UM/UIM coverage as desired would eliminate the need to consider stacking waivers at the time of purchase.
- Under a solution like that envisioned by SB 676, UM/UIM limits would not depend on the number of accessible vehicles/policies an insured may be able to access – the limits would be intentionally purchased.
- A solution like that envisioned by SB 676 may result in an overall decrease, on average, in coverage available under which to pursue benefits, either because the level of UM/UIM consumers proactively select will be less than what they would have had with stacking or because there would no longer be the issues effectuating stacking waivers that exist today and result in consumers inadvertently maintaining stacked benefits.



- The current minimum limits of \$15,000/\$30,000/\$5,000 that have the secondary impact of limiting an insured's UM/UIM coverage are low.

Thank you for the opportunity to provide comment on stacking. The Department is glad to inform this discussion with historical context, data, and the status of legal interpretations of this law. The Department would be pleased to provide additional information and data as requested by the Committee. If you have any questions, please contact the Department's Office of Legislative Affairs at (717) 783-2005.