

2025 PA Super 2

ERIE INSURANCE EXCHANGE	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
HANNAH BALUCH	:	
	:	
Appellant	:	No. 58 MDA 2024

Appeal from the Order Entered January 3, 2024
 In the Court of Common Pleas of Cumberland County Civil Division at
 No(s): 2022-09153-0

BEFORE: PANELLA, P.J.E., LANE, J., and STEVENS, P.J.E.*

OPINION BY PANELLA, P.J.E.: **FILED: JANUARY 3, 2025**

The issue in this case is whether an insured is entitled to stacked UIM benefits although another household policy excludes vehicles that are insured under the policy from the definition of “underinsured motor vehicles.” We disagree with the Appellee that the present case is controlled by ***Wolgemuth v. Harleysville Mut. Ins. Co.***, 535 A.2d 1145 (Pa. Super. 1988) (*en banc*) and ***Newkirk v. United Servs. Auto. Ass’n***, 564 A.2d 1263 (Pa. Super. 1989).¹ The ***Wolgemuth*** and ***Newkirk*** decisions stand for the proposition that liability coverage and *primary* underinsured motorist (“UIM”) coverage cannot come from the same policy. This is not the situation here, which involves secondary UIM coverage stacked on primary UIM coverage from a

* Former Justice specially assigned to the Superior Court.

¹ **See** Appellee’s Brief, at 11-16.

separate policy. When an insured has their own motor vehicle insurance policy that provides stacked UIM coverage they are entitled to stack UIM coverage from other household policies unless they expressly choose to waive stacked coverage. **See** 75 Pa.C.S.A. § 1738(a). Here, the insured elected and paid for stacked UIM coverage under her own separate policy. Erie Insurance Exchange's limited definition of "underinsured motor vehicle" acted as a disguised waiver of UIM coverage and therefore, is invalid.

Hannah Baluch appeals from the order granting the motion for judgment on the pleadings filed by Erie Insurance Exchange ("Erie") and denying the cross-motion for judgment on the pleadings filed by Baluch. Because Erie's policy provision prevented Baluch from recovering stacked UIM benefits for which she paid, and the trial court erred in concluding that the present case is controlled by ***Wolgemuth*** and ***Newkirk***, we reverse.

The relevant facts are not in dispute. In April 2022, riding as a passenger, Baluch suffered serious bodily injury from a single vehicle motorcycle accident that tragically resulted in her stepfather's death. Two insurance policies issued by Erie are relevant to this case. Baluch's stepfather and mother were named insureds on a policy that covered the motorcycle and other vehicles ("Policy 1"). As a member of the household, Baluch was an insured of Policy 1. Policy 1 provided \$100,000 per person in liability coverage and \$100,000 per person in uninsured motorist ("UM") and UIM coverage. Baluch had a separate policy for her personal vehicle ("Policy 2"). Policy 2

provided \$100,000 in UM/UIM coverage. Importantly, both Policy 1 and Policy 2 selected stacking UIM coverage.

Erie paid out to Baluch the \$100,000 liability coverage from Policy 1 and \$100,000 in UM/UIM coverage from Policy 2. However, Erie denied Baluch's claim seeking \$100,000 in UM/UIM coverage from Policy 1 through stacking. Under Policy 1, vehicles that are insured under the policy are excluded from the definition of "underinsured motor vehicle."² It is this exclusion that Erie relied upon to deny Baluch UIM benefits from Policy 1.

Erie initiated the current litigation by filing a complaint for declaratory judgment seeking a judicial determination that no further benefits were due to Baluch under Policy 1. Baluch filed a counterclaim for declaratory judgment. Thereafter, Erie and Baluch filed a motion for judgment on the pleadings, and a cross-motion for judgment on the pleadings, respectively. On January 3, 2024, the trial court entered an opinion and order granting Erie's motion for judgment on the pleadings and denying Baluch's cross-motion for judgment

² Policy 1 defines an "underinsured motor vehicle," in relevant part, as

"Underinsured motor vehicle" means a "motor vehicle" for which the limits of available liability bonds or insurance or self-insurance at the time of the accident are insufficient to pay losses and damages.

An "underinsured motor vehicle" does not include a "motor vehicle:"

1. insured for Liability Protection under this policy[.]

on the pleadings. In ruling in Erie's favor, the trial court reasoned that it was bound by **Wolgemuth** and **Newkirk** "[s]ince [Baluch] is claiming the UIM benefits from the same policy that provided the liability benefits[.]" Trial Court Opinion, 1/3/24, at 4. Further, the trial court found that **Gallagher v. Geico**, 201 A.3d 131 (Pa. 2019) was factually distinguishable, and thus not controlling, because "in **Gallagher**, the injuries were caused by an unrelated tortfeasor whose automobile liability coverage was insufficient." **Id.** (footnote omitted). Baluch timely appealed. The trial court did not author a Rule 1925(a) opinion instead relying on its January 3, 2024, opinion.

Baluch raises the following issues for our review.

[1.] Whether the insurance policy provision/clause relied upon by Appellee, Erie Insurance Exchange, to deny inter-policy stacked [UIM] to Appellant, Hannah Baluch, is invalid and unenforceable under the circumstances presented in this case when the subject provision of the household policy is in direct conflict with the mandates of 75 Pa.C.S.[A.] §1738, as stacked coverage was selected and paid for on both policies and, but for application of the subject provision, Hannah Baluch would receive the [UIM] coverage provided through the household policy.

[2.] Whether the trial court's decision should be reversed because the limitation of recovery provision in [Erie's] policy restricting [Baluch] from recovering [UIM] benefits from the same policy that she also recovered liability benefits impermissibly narrows and conflicts with the statutory mandates of the Pennsylvania Motor Vehicle Financial Responsibility Law [("MVFRL")].

Appellant's Brief, at 4 (unnecessary capitalization and suggested answers omitted).

These issues are interrelated, and thus we will address them together. Baluch challenges the trial court's ruling on the parties' cross-motions for

judgment on the pleadings. In reviewing the grant of a motion for judgment on the pleadings we must determine whether “the trial court’s action respecting the motion for judgment on the pleadings was based on a clear error of law or whether there were facts disclosed by the pleadings which should properly go to the jury.” **Lewis v. Erie Ins. Exch.**, 753 A.2d 839, 842 (Pa. Super. 2000), *aff’d*, 793 A.2d 143 (Pa. 2002) (citation and quotation marks omitted). Here, “[s]ince there are no factual issues disclosed by the pleadings that should properly go to the jury, our review is to determine whether the trial court committed a clear error of law.” **Id.**

The legal question before us is whether, under the facts of this case, the definition of “underinsured motor vehicle” in Policy 1 that prevented Baluch from recovering stacked UIM benefits for which she paid violated the MVFRL.

When insurance policy provisions conflict with the MVFRL, the policy provisions are invalid and unenforceable. **See Prudential Prop. & Cas. Ins. Co. v. Colbert**, 813 A.2d 747, 750 (Pa. 2002). UIM coverage is a key part of the MVFRL. “UIM coverage serves to promote the recovery of damages for innocent victims of accidents with . . . underinsured drivers.” **Lewis v. Erie Ins. Exch.**, 793 A.2d 143, 151 (Pa. 2002). Under the MVFRL, an “underinsured motor vehicle” is “[a] motor vehicle for which the limits of available liability insurance and self-insurance are insufficient to pay losses and damages.” 75 Pa.C.S.A. § 1702 (definitions). UIM “coverage shall provide protection for persons who suffer injury arising out of maintenance or use of

a motor vehicle and are legally entitled to recover damages therefor from owners or operators of underinsured motor vehicles." 75 Pa.C.S.A. § 1731(c). Further, an insurance policy must offer both UM and UIM coverage equal to the bodily injury liability amount. **See** 75 Pa.C.S.A. § 1731(a).

Relevant to UIM coverage is the concept of stacking. "The concept of 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." *Erie Ins. Exch. v. Mione*, 289 A.3d 524, 526 n.2 (Pa. 2023) (citation omitted). Section 1738 of the MVFRL, states, in pertinent part:

§ 1738. Stacking of uninsured and underinsured benefits and option to waive

(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.

75 Pa.C.S.A. § 1738(a).

"While stacked coverage is the default, an insured nevertheless may waive[] stacked coverage limits by signing a written waiver form, the text of which is dictated by Subsection 1738(d)." *Mione*, 289 A.3d at 529 (footnote omitted). Any waiver of stacked UIM coverage must be reflected in reduced premiums. **See** 75 Pa.C.S.A. § 1738(c).

(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.

75 Pa.C.S.A. § 1738(b)-(c).

Baluch argues that ***Wolgemuth*** and ***Newkirk***, which the trial court relied on, are inapplicable to this case because Baluch had her own policy that provided primary UIM coverage, and that she “is entitled to stack [Policy 1]’s [UIM] benefits onto the [UIM] benefits she has been offered through her own policy.” Appellant’s Brief, at 18; ***see id.*** at 18-23. Instead, Baluch argues that the trial court should have relied on ***Gallagher*** because like here, ***Gallagher*** involved primary UIM coverage on which additional UIM coverage could be stacked. ***See id.*** at 29-30. Further, Baluch argues that the definition of “underinsured motor vehicle” in Policy 1 violates the MVFRL by acting as a *de facto* waiver and limiting her stacked UIM coverage. ***See id.*** at 23-24. Thus, according to Baluch, since ***Wolgemuth*** and ***Newkirk*** do not prevent her from recovering stacked UIM benefits from Policy 1, and she paid for and never waived stacked UIM coverage on Policy 2, she is entitled to the UIM benefits from Policy 1. ***See id.*** at 41.

Erie argues that the trial court correctly applied ***Wolgemuth*** and ***Newkirk*** to the instant case because in a single vehicle accident an insured cannot recover both liability and UIM benefits from the same policy. ***See*** Appellee's Brief, at 10. Further, Erie argues that the trial court correctly did not apply ***Gallagher*** because ***Gallagher*** is distinguishable from this case. ***See id.*** at 29.

The issue in this case is not whether Baluch is entitled to primary UIM benefits but rather whether she is entitled to stacked UIM benefits.

The cases relied upon by the trial court and Erie, however, ***Wolgemuth*** and ***Newkirk***, addressed only a single insurance policy, and thus, stacking UIM coverage was not at issue. In other words, the present case concerns whether Baluch can stack UIM coverage where ***Wolgemuth*** and ***Newkirk*** involved whether the insured was entitled to UIM benefits in the first instance. When read closely ***Wolgemuth*** and ***Newkirk*** do not control the instant case.

In ***Wolgemuth***, a passenger covered under the driver's automobile insurance policy was killed in a single vehicle accident. ***See*** 535 A.2d at 1146. Notably, the passenger was only covered under the driver's policy and did not have a separate policy. ***See id.*** at 1146-47. The driver's automobile insurance policy included \$100,000 in liability coverage and \$100,000 in UM/UIM coverage. ***See id.*** at 1147. The insurer paid the full amount of liability coverage to the passenger's estate but denied the claim for UIM benefits. ***See***

id. The trial court entered summary judgment in favor of the insurer and an *en banc* panel of this Court affirmed. **See *id.*** at 1146.

This Court rejected the appellant's argument that the policy's definition of "underinsured motor vehicle," which excluded any vehicles owned by family members, was void as violating public policy for denying UIM benefits. **See *id.*** at 1148. The Court reasoned that the case did not involve the denial of UIM coverage because there must be a separate policy that provides UIM coverage. **See *id.*** at 1148-49. The Court explained that UIM coverage necessarily "requires the existence of at least *two* applicable policies of motor vehicle insurance." ***Id.*** at 1149 (citing 75 Pa.C.S. § 1731(c)) (emphasis in original). Further:

An underinsured motor vehicle, must, by definition, be an insured vehicle. Thus, the statute contemplates one policy applicable to the vehicle which is at fault in causing the injury to the claimant and which is the source of liability coverage (which is ultimately insufficient to fully compensate the victim), and a *second* policy, under which the injured claimant is either an insured or a covered person. **It is the *second* policy which the statute contemplates as the source of underinsured motorist coverage**, where the liability coverage provided by the first policy of insurance is insufficient to fully compensate the claimant for his injuries.

Id. at 1149 (italics in original; bold added). In recognizing that its decision was limited to the facts before it, *i.e.*, where the claimant did not have a separate policy that provided UIM coverage, the Court remarked that

We are not here asked to determine, and express no opinion upon, whether an insured, as that term is defined by the [MVFRL], could, under certain circumstances, recover under both the liability and underinsured motorist provisions of a single policy.

Id.

Newkirk involved a factual scenario similar to ***Wolgemuth***. In ***Newkirk***, the appellant sustained serious bodily injury while riding as a passenger in a car operated by her husband. ***See*** 564 A.2d at 1263. The Newkirks were insured under a single policy that limited liability coverage to \$15,000. ***See id.*** The appellant sought to recover the maximum amount of UIM coverage under her husband's policy which was rejected by the insurer based on the family car exclusion provision in the policy. ***See id.*** at 1263-64. The trial court granted summary judgment in favor of the insurer and this Court affirmed. ***See id.*** at 1264.

The ***Newkirk*** Court recognized that the controlling fact in its analysis was that there was only one policy that provided both liability and UIM coverage.

It is important to keep in mind in this case that we are considering whether Mrs. Newkirk is precluded from recovering both liability and underinsured motorist coverage from the ***same*** policy, that is, her husband's policy with USAA. We are not addressing the issue of whether the "family car exclusion" could be enforced to bar a wife's recovery of underinsured motorist benefits through her own separate automobile insurance if she was injured while riding as a passenger in her husband's vehicle, where the third party benefits which she recovered from the husband's insurance failed to pay her losses and damages.

Id. at 1267 n.8 (emphasis in original; citation omitted). Additionally,

the recovery of underinsured motorist coverage is dependent on the existence of two policies of insurance: the tortfeasor's policy and the claimant's policy. When a tortfeasor is underinsured, the claimant recovers third party liability benefits from the tortfeasor's

insurance and supplements this recovery with the underinsured motorist benefits available through his or her *own* policy of insurance.

Id. at 1268 (emphasis in original).

The controlling fact in ***Wolgemuth*** and ***Newkirk*** was not that the passenger was injured in a single vehicle accident, but rather that the passenger was covered under the same insurance policy as the driver and did not have a separate insurance policy which provided UM/UIM coverage. Here, unlike ***Wolgemuth*** and ***Newkirk***, Baluch had a separate policy that provided her *stacked* UIM coverage, for which she paid an additional premium. **See** 75 Pa.C.S.A. § 1738(c). Accordingly, absent a valid waiver, she was entitled to stack UIM benefits with any policy in which she was a named insured.

Moreover, we disagree with the trial court and Erie's attempt to distinguish ***Gallagher v. GEICO Indem. Co.***, 201 A.3d 131 (Pa. 2019) from the present case. The Appellee reasons that ***Gallagher*** is distinguishable from the present case, in part, because ***Gallagher*** involved a two-vehicle accident. This fact does not meaningfully distinguish ***Gallagher*** from the instant case. As previously explained, UIM coverage is determined by the claimant having a second separate policy not by the number of vehicles involved in the accident.

In ***Gallagher***, in invalidating a household vehicle exclusion provision, our Supreme Court recognized the operative facts in reaching its conclusion.

(1) Stouffer, the tortfeasor who caused the accident, was underinsured; (2) Gallagher did not sign the statutorily-prescribed

UIM stacking waiver form for either of his GEICO policies; and (3) he would have received the UIM coverage that he bought and paid for under both of his GEICO policies pursuant to Subsection 1738(a) of the MVFRL, save for the “household vehicle exclusion” found in an amendment to the Automobile Policy for which no explicit, formal acknowledgement was provided.

Gallagher, 201 A.3d at 137.

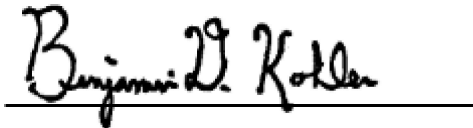
Those same facts are present here. The stepfather was underinsured because his liability coverage did not fully compensate Baluch. There was no UIM stacking waiver form, mandated under 75 Pa.C.S.A. § 1738(d)-(e), associated with either Policy 1 or Policy 2. Instead, the insureds under Policy 1 and Policy 2 both elected and paid for stacked UIM coverage. Thus, absent the household vehicle exclusion, Baluch would be entitled to stacked UIM coverage from Policy 1.

“One of the insurance industries’ age-old rubrics in this area of the law is that an insured should receive the coverage for which he has paid.” **Id.** at 138. Here, Baluch paid for stacked UIM coverage and thus, was entitled to such coverage. The definition of “underinsured motor vehicle” in Policy 1 acted as a disguised waiver of stacking. Such disguised waivers cannot prevent an insured from recovering UIM benefits and are invalid. **See Mione**, 289 A.3d at 531 (“the MVFRL precludes any clause that acts as a disguised waiver of stacking by skirting Section 1738’s express waiver requirements.”) (footnote omitted). Therefore, we are constrained to conclude the trial court erred as a matter of law in granting Erie’s motion for judgment on the pleadings and denying Baluch’s cross-motion for judgment on the pleadings.

Accordingly, we reverse the trial court's order.

Order reversed.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 01/03/2025