

LEGAL ALERT

Intra-Policy UM/UIM Stacking

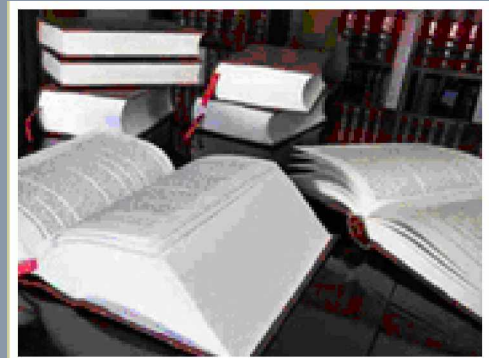
Recent Developments

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The question of whether multiple uninsured or underinsured motorist ("UM/UIM") coverages can be combined when a single policy insures more than a single vehicle is of considerable importance to motor vehicle insurers. When intra-policy stacking is allowed, what was intended to be a policy with the UM/UIM limit stated in the declarations becomes a policy with two, three or even more times that limit.

The Virginia Supreme Court's decision in *Virginia Farm Bur. Mut. Ins. Co. v. Williams*, 278 Va. 75, 677 S.E.2d 299 (2009), authorizing intra-policy stacking of UM/UIM motorist coverages, raised a number of questions as to the efficacy of the standard anti-stacking clause in the UM/UIM provisions of all or nearly all Virginia motor vehicle policies. In July, 2010, we advised our clients that a federal court had rejected a broad interpretation of *Williams*. In *Lloyd v. Travelers Prop. & Cas. Ins. Co.*, 2010 WL 2928806 (E.D. Va. July 22, 2010) (Ellis III, J.), Judge Ellis distinguished *Williams* on its facts and held that a conventional anti-stacking provision continued to bar coverage, even where the limits of coverage were stated in the declarations, as opposed to in a UM endorsement, and even where the declarations reflected that multiple vehicles were provided with separate limits of UM/UIM coverage. This decision was in accord with the rulings of two state trial courts. See *Salzman v. Kanchev*, CL09-1566 (Chesapeake Cir. Ct. February 4, 2010) (J. Forehand) (cited in *Lloyd*) and *Patterson. Nationwide Gen. Ins. Co.*, CL09-2805 (Chesterfield Ct. Ct. April 26, 2010) (J. Shelton).

It now appears that the decision in *Lloyd* and the two state court cases represent a clear trend towards limiting *Williams* to its facts and continuing to reject attempts to stack coverages provided under a single policy insuring several vehicle. See *Roberta O'Brien v. Joseph Oatman, et als.*, CL09-5381 (Richmond Cir. Ct., June 23, 2010) (Hughes, J); *Davis v. Nationwide Mut. Ins. Co.*, CL10-555 (City of Colonial Heights Cir. Ct., August 31, 2010) (Burgess, J); *Joyce v. Hayes*, CL09-833 (Danville Cir. Ct., June 25, 2010) (Melesco, J.). *Collier v. Erie Ins. Exch.*, CL10-86 (Page



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County, September 27, 2010) (Wilson, J.)

In the most recent case of *Hostettler v. Auto-Owners Ins. Co.*, No. 3:10-CV-279 (E.D. Va., Richmond Div. October 7, 2010), our firm's client prevailed against one of the leading attorneys representing insureds on the intra-policy stacking issue. The policy at issue listed the coverage applicable to each vehicle in separate "blocks" on the declarations pages such that there were four different references to the "each person" limit of UM/UIM coverage. The insured's counsel argued that these separate references in the declarations created an ambiguity that should be construed in the insured's favor to allow stacking. Judge Spencer disagreed and held that there was no ambiguity in light of the Limit of Liability clause which provided that the stated "each person" limit applied "regardless of the number of . . . vehicles or premiums shown in the Declarations." He found that this anti-stacking language was effective and that only a single UM/UIM limit applied.

The courts in the cases we have discovered addressing this issue have uniformly held that the *Williams* decision did not represent a sea change in the law regarding intra-policy stacking. Notwithstanding the unanimity of the courts, it must be recognized that all of these decisions are from lower courts. A petition for appeal to the Virginia Supreme Court has been filed in at least one of the state court cases and the *Lloyd* case has been appealed to the United States Court of Appeals for the Fourth Circuit. Moreover we are aware of other lower court cases in which insureds have asserted that coverages can be stacked within a single policy. The law in this area is thus far from settled. We will continue to monitor the law as it evolves in the aftermath of *Williams*.

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