

# LEGAL ALERT

## Intra-Policy UM/UIM Stacking

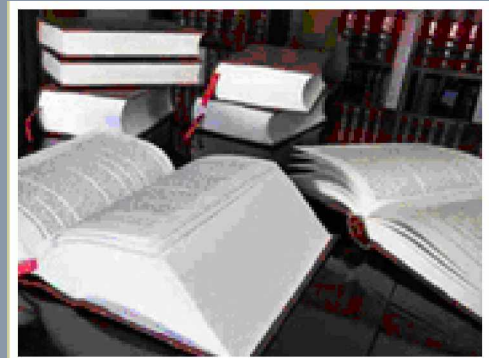
### --- Unambiguous Anti-Stacking Language

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Until a year ago, the law on stacking uninsured and underinsured motorist coverages under a single policy insuring several vehicles was clear. In *Goodville Mut. Cas. Co. v. Borrer*, 221 Va. 967, 275 S.E.2d 625 (1981) ("*Borrer*"), the Virginia Supreme Court had held that it was "the rule in Virginia that the stacking of UM coverage will be permitted *unless* clear and unambiguous language exists on the fact of the policy to prevent such multiple coverage." (emphasis added). The court in *Borrer* held that the limits of liability clause in that case was sufficiently clear and unambiguous to prohibit stacking. That clause provided that the "each person" and "each accident" limits applied "[r]egardless of the number of . . . motor vehicles to which this insurance applies". Because the "regardless of" language was standard in Virginia policies, the courts after *Borrer* consistently held that UM/UIM coverages under a policy insuring several vehicles could not be stacked.

Last year, the Virginia Supreme Court issued a decision that raised doubt among the coverage bar as to whether *Borrer* had been significantly limited. In *Virginia Farm Bur. Mut. Ins. Co. v. Williams*, 278 Va. 75, 677 S.E.2d 299 (2009) the court looked beyond the "regardless of" language and found an ambiguity based on the fact that the three vehicles insured under the policy did not have identical UM limits. The court observed that an insured injured by an uninsured motorist while occupying a non-owned vehicle had no way of knowing whether the \$250,000 limit applicable to one vehicle applied, whether one of the \$300,000 limits applicable to the other two vehicles applied or whether all three limits applied. The court concluded that the disparity in the limits stated in the declarations rendered the policy ambiguous.

The court in *Williams* did not purport to overrule *Borrer* but its reasoning raised questions as to whether a policy listing separate vehicles with separate limits in the declarations would be deemed ambiguous even if those limits were the same. Questions also arose as to whether a limits of liability clause including the "regardless of" language but constructed somewhat differently from the



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clause at issue in *Borrer* might be held to render the policy ambiguous.

In a case decided on July 22, 2010, Judge Ellis of the United States District Court for the Eastern District of Virginia, found that it was only the disparity in the amount of coverage applicable to each vehicle that had created the ambiguity in *Williams*. *Lloyd v. Travelers Prop. & Cas. Ins. Co.*, Case No. 1:10cv47 (E.D. Va. July 22, 2010) (J. Ellis). Where the limits for each vehicle were stated separately in the declarations but the amount of UM coverage for each vehicle was the same and the policy contained “regardless of” language similar to that found effective in *Borrer*, there was no ambiguity. Although the format of the policy in *Lloyd*, and particularly the limits of liability clause, differed from the format of the policy in *Borrer*, the court found that this was not significant.

Judge Ellis found that the critical issue under *Borrer* was whether the limits of liability clause was ambiguous as written while the issue under *Williams* was whether the clause was ambiguous as applied. Because the “regardless of” clause at issue in *Lloyd* was substantially similar to the clause in *Borrer*, the court held that it was not ambiguous as written and because the insured vehicles all had the same limit of coverage, the court held that clause was not ambiguous as applied.

At least two Circuit Courts have rendered decisions concerning intra-policy stacking since the decision in *Williams* and both have held that the policies at issue clearly and unambiguously barred stacking. 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).

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