



PA SUPREME COURT LIMITS EFFECT OF UIM STACKING WAIVERS

In an October 23, 2008 opinion, the Pennsylvania Supreme Court ruled that a valid stacking waiver does not prohibit a claimant, who was a guest passenger in a vehicle, from recovering UIM limits under both the guest vehicle's UIM policy and her own UIM policy (as excess). *Generette v. Donegal* ___ PA. ___. Specifically, the Court found that stacking waivers under Section 1738 of the Pennsylvania MVFRL only applied to "insureds" as defined by 75 Pa.C.S.A. 1702, and, therefore, a guest passenger (who is not defined as an "insured" by §1702) was not precluded from "stacking" her own UIM benefits on top of the guest vehicle's UIM limits.

The Court also invalidated Donegal's "other insurance" provision, finding that it attempted to create "gap" UIM coverage instead of "excess" coverage as required by the language of the Pennsylvania MVFRL. Donegal's "other insurance" clause allowed a maximum recovery under all policies to not exceed the amount that the policy limit of the Donegal policy exceeded the policy limit of the first priority UIM carrier.

If you have any questions on this important new case, or any other aspect of the Pennsylvania MVFRL, do not hesitate to contact me.

John A. Livingood, Jr.
jlivingood@margolisedelstein.com

Margolis Edelstein
The Curtis Center
170 S. Independence Mall W., Suite 400E
Philadelphia, PA 19106-3337

215-931-5868 (direct)
215-922-1772 (fax)