

In Support of House Bill 93 (2010)

A Simple, Effective Solution to a Long-Standing Problem in Underinsured Motorist Cases

In Virginia, the mandatory minimum limit of liability and underinsured (UIM) coverage for personal injuries arising out of an automobile accident is \$25,000 per person. Many responsible Virginians choose to purchase a higher level of coverage to protect themselves, their families, and other drivers in the event of a serious accident with a driver who chose only to pay for the minimum \$25,000 coverage. Those drivers who pay higher premiums for this additional coverage have a right to expect that their insurer will treat them fairly if they are forced to make a claim under their UIM policy. However, due to what is essentially a loophole in the current law, just the opposite is happening far too often.

When liability for an accident is clear and the damages obviously exceed the coverage limits of liability due to serious injuries, the liability insurer will usually offer the full amount of coverage available under the policy. If the at-fault driver bought only the minimum level of coverage, the limit for an injury to one other person will be \$25,000.

If the injured person prudently purchased more than the minimum coverage, he is also entitled to recover from the underinsured motorist (UIM) provision of his own policy. The amount available will be the coverage limit of his policy less the \$25,000 recovered from the at-fault driver's insurance. If the injured person's policy limit is \$100,000, then the underinsured coverage available will be \$75,000. Uninsured motorist (UM) coverage works similarly when the at-fault driver has no insurance at all.

Unfortunately, UIM carriers sometimes refuse to settle claims even when liability is clear, the at-fault driver's insurer has offered its full coverage, and the damages will obviously exceed that amount. Under the law, UIM motorist carriers are not obligated to pay until a plaintiff obtains a judgment against the underlying tortfeasor.¹ Furthermore, the law requires that the at-fault driver's insurance company pay to defend the case, even if that company has offered the limits of its policy. As a result, there is no economic incentive for UIM carriers to consider settling the case promptly.

Under this situation meritorious cases that should have been resolved quickly **end up in Virginia's courts**, needlessly expending both public and private resources. Some UIM carriers hold onto their money until they are required to pay a judgment, putting the injured plaintiff, at-fault driver, witnesses, jurors, judges and other court personnel through months, sometimes years, of needless litigation and eventually a trial.

Because the UIM carrier is not responsible for litigation costs, (and benefits financially from delaying payment), it has no incentive to pay its share and allow the case to settle. Instead, the injured person must sue the driver who has already admitted fault, and the liability carrier, having already offered to pay what it owes, must **also** pay to defend the suit. The accident victim continues to wait for his money, both sides absorb the costs of going to trial, and the UIM carrier simply earns investment income on the funds until a verdict is handed down. This situation is wasteful **and** unfair.

¹ The Virginia Supreme Court has held that "the obligation of the uninsured motorist insurer arises only if it is determined that the insured is 'legally entitled to recover' damages from the owner or operator of an uninsured motor vehicle" and that "[j]udgment is the event which determines legal entitlement to recover." *Midwest Mutual Insurance Company v. Aetna Casualty*, 216 Va. 926, 929, 223 S.E.2d 901, 904 (1976).



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House Bill 93 addresses each of these problems, while preserving the legitimate rights and interests of each of the parties involved.

- **House Bill 93 removes the incentive for delay.** When the liability insurer has fulfilled its obligations, the UIM carrier will now be required to be responsible for the costs of the ongoing litigation.
- **House Bill 93 aligns the cost of the litigation** with the insurance company that is making the choice to continue the litigation. It protects the liability carrier from incurring the cost of a trial when it has already fulfilled its financial obligation by offering the limits of its policy
- **House Bill 93 promotes judicial and economic efficiency.** Under the current law, cases with clear liability and significant injuries needlessly work their way through the courts of Virginia because the UIM carriers will not pay until they are forced to. This puts an increased strain on an already overburdened court system. With House Bill 93, cases that should be settled early will be.
- **House Bill 93 maintains the liability carrier's legal duty** to provide the at-fault driver with a legal defense. The bill operates only to shift the cost of the litigation and the at-fault driver is able to maintain the same defense attorney.

In short, House Bill 93 operates in a simple and straightforward manner to create a fair solution to a longstanding problem. UIM carriers who are not part of the problem can continue to do business as usual. Those who have been taking a free ride at the expense of plaintiffs, defendants, liability carriers and the courts will finally have an incentive to do things differently.

