

William & Mary Law Review

Volume 7 (1966)
Issue 1

Article 7

January 1966

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James L. Tucker, *The Virginia Uninsured Motorist Law: Its Intent and Purpose*, 7 Wm. & Mary L. Rev. 106 (1966), <https://scholarship.law.wm.edu/wmlr/vol7/iss1/7>

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THE VIRGINIA UNINSURED MOTORIST LAW: ITS INTENT AND PURPOSE

Until quite recently, there was a great uncertainty in Virginia as to the legality of the so-called "other insurance" clauses which many insurance companies inserted in uninsured motorist endorsements as a matter of course. These clauses were generally held by the federal courts to be enforceable, and, in the process, were claimed to be compatible with the statutory provisions of the Virginia uninsured motorist law.¹ Then in 1965, the Supreme Court of Appeals, in *Bryant v. State Farm Mut. Auto. Ins. Co.*,² struck down these clauses on the ground that they were contrary to the intent and purpose of the Virginia uninsured motorist statute. In order to thoroughly ferret out the reasoning behind the *Bryant* decision, one must determine the true purpose of the uninsured motorist law; therefore, it is necessary to examine not only decisions concerned directly with the "other insurance" clause, but also this state's uninsured motorist laws in general.

Although the Virginia uninsured motorist statute is of relatively recent origin, a number of court decisions have proceeded rapidly to form a solid assemblage of judicial interpretations from which may be derived the specific rules and principles that today comprise the uninsured motorist law in this state. While no attempt will be made to solve or to discuss all the problems that may possibly arise under this law, it is hoped that specific principles can be stated and that certain conclusions can be drawn which will enable both the layman and the lawyer to better understand the reasons for the result reached in the *Bryant* decision and related cases.

THE FINANCIALLY IRRESPONSIBLE MOTORIST AND THE VIRGINIA STATUTE

In order to fully comprehend the value of Virginia's uninsured motorist legislation, one must realize the great need that exists for protection against the financially irresponsible motorist. The financially irresponsible driver is, of course, a person who is either without funds or whose funds are, for one reason or another, not available in sufficient amount for the satisfaction of any judgment that may be rendered against him. For practical purposes, the term "financially irresponsible motorist" usu-

1. *Travelers Indem. Co. v. Wells*, 316 F.2d 770 (4th Cir. 1963), *reversing* 209 F.Supp. 784 (W.D. Va. 1962).

2. 205 Va. 897, 140 S.E.2d 817 (1965).

ally includes hit and run drivers, those driving stolen vehicles, uninsured motorists, and those driving automobiles upon which the insurance company denies coverage. By what means are members of society to be protected against suffering injuries, crippling, and property losses caused by such a motorist? Certainly, justice cannot be served if the injured party wins his case in court against the negligent driver only to discover that the wrongdoer is unable to pay the damages.³

As a result of the public concern over the myriad of problems arising from bodily injuries and property damages negligently inflicted by automobile drivers who are financially irresponsible or uninsured, the Virginia uninsured motorist statute was enacted.⁴ This type of statute, by far the most successful of the four main types of statutes in the United States aimed at this problem,⁵ operates directly on the insurance within the state contain a special clause protecting the insured against companies by requiring that every automobile liability policy written bodily injury or property damages suffered at the hands of an uninsured motorist.⁶ The purpose of requiring such a clause is to give the insured

3. See Comment, *The Financially Irresponsible Motorist: A Survey of State Legislation*, 10 VILL. L. REV. 545 (1965).

4. "The intent of the General Assembly in enacting the Uninsured Motorist Act was to provide benefits and protection against the peril of injury by an uninsured motorist to an insured motorist, his family, and the permissive users of his vehicle." Annot., S.C. CODE § 46-750.33 (Supp. 1964). The South Carolina law is modeled after the Virginia statute. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964).

For a brief history of the Virginia uninsured motorist statute, see Court, *Virginia's Experience with the "Uninsured Motorist Act"*, 3 W. & M. L. REV. 237 (1962).

5. The other three types are: (1) statutes which make it compulsory that every vehicle registered in the state have liability insurance, that is, it must be covered by a policy of insurance which indemnifies against liability on account of injuries or property damage inflicted by the insured on another; (2) unsatisfied judgment fund statutes, which provide for the establishment of a fund for the victims of accidents involving financially irresponsible drivers; and, (3) financial responsibility statutes, by far the most popular type, which are brought into action and impose sanctions and/or penalties only after the judgment has been handed down or, at the earliest, only after the accident has occurred.

For criticisms of these various legislative enactments, see 10 VILL. L. REV., *supra* note 3. For a discussion of the inadequacies of the financial responsibility statute, see VA. ADVISORY LEGISLATIVE COUNCIL, *Report of Nov. 4, 1957, to Hon. Thomas B. Stanley, Governor of Va., and the General Assembly of Va.*

6. VA. CODE ANN. 1950 § 38.1-381(b) (Supp. 1964).

The uninsured motorist law of Virginia is presently found in three principal parts in three separate titles of the Virginia Code of 1950. Code sections 12-65 through 12-67, the first part, creates the uninsured motorist fund and specifies how it is to be administered. Section 38.1-381, the heart of Virginia's uninsured motorist law, sets forth specific mandatory provisions which every automobile liability policy issued in this state must contain. The third part, found in sections 46.1-167.1 through 46.1-167.6,

who has been injured by an uninsured motorist the same protection he would have had if he had been injured by a driver covered by liability insurance.⁷ In short, the statute intends to relieve insured drivers, to a certain extent, of the risk of injury or damage resulting from the negligent conduct of financially irresponsible uninsured persons.⁸ And, as this statute was enacted for the benefit of the injured parties, it is to be liberally construed so that the purpose intended may be realized.⁹

By the force of § 38.1-381(b), the Virginia uninsured motorist statute becomes as much a part of every automobile liability policy issued in this state as if it were expressly included therein and the insurance company is bound to pay the insured all sums to which he may become legally entitled to recover as damages from an uninsured motorist.¹⁰ Specifically, § 38.1-381(b) provides that no automobile liability policy shall be issued or delivered in Virginia unless it contains an uninsured motorist endorsement which undertakes to "pay the insured all sums which he shall legally be entitled to recover as damages from the owner or operator of an insured motor vehicle . . ." within the limits of Code § 46.1-1(8) (\$15,000 for injury or death to any one person; \$30,000 for injury or death of two or more persons in any one accident; and, \$5,000 for damage to or destruction of property in any one accident).

The operation of Virginia's uninsured motorist law is not confined to accidents occurring within this state; the insurance company's obligation exists even where the insured has an accident in another state which has no uninsured motorist law. For example, in *Hodgson v. Doe*,¹¹ an insured Virginian was injured in Tennessee when her automobile was allegedly forced off the road by an unidentified motorist. The Virginia court, in holding the insurance company liable for her damages, noted:

The endorsement required by § 38.1-381(b) on a plaintiff's insurance

provides for the annual collection of a \$20.00 fee for each uninsured automobile registered with the Division of Motor Vehicles. See *Yellow Cab Co. of Virginia, Inc. v. Adinolfi*, 204 Va. 815, 134 S.E.2d 308 (1964).

7. *Chandler v. Government Employees Ins. Co.*, 342 F.2d 420 (5th Cir. 1965); see 7 AM. JUR.2d AUTO. INS. § 135 (1963).

8. *Motors Ins. Co. v. Surety Ins. Co.*, 243 S.C. 487, 134 S.E.2d 631 (1965).

9. *Byrant v. State Farm Mut. Auto. Ins. Co.*, 205 Va. 897, 140 S.E.2d 817 (1965); *State Farm Mut. Auto. Ins. Co. v. Brower*, 204 Va. 887, 134 S.E.2d 277 (1964).

10. *Hodgson v. John Doe*, 203 Va. 938, 128 S.E.2d 444 (1962); *Mangus v. John Doe*, 203 Va. 518, 125 S.E.2d 166 (1962); *State Farm Mut. Auto. Ins. Co. v. Duncan*, 203 Va. 440, 125 S.E.2d 154 (1962).

11. 203 Va. 938, 128 S.E.2d 444 (1962).

policy has no territorial limitation, but binds the insurance company to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle. . . . To limit the coverage of the endorsement to accidents happening in Virginia would be to create a limitation which the statute does not contain. The endorsement is the contract which the insurance company makes with the insured to protect him against the uninsured motorist. It is a protection for which the insured has paid an additional premium and it follows the insured to the place of the accident outside of Virginia, just as the usual indemnity and collision provisions of an automobile insurance policy follow the car and protect the operator wherever the accident may occur.¹²

An interesting situation has arisen concerning the specified limits placed on the liability of the insurance companies offering uninsured motorist coverage. Remembering that recovery only up to \$30,000 may be had for injury or death to two or more persons involved in any one accident; what happens, for instance, when the insured persons, riding in their automobile, are simultaneously struck by two uninsured motorists and suffer injuries to the extent of \$60,000? Are the injured plaintiffs allowed to recover \$60,000 from the insurance company, the aggregate amount for two accidents, or \$30,000, the limit recoverable for one accident? Under such circumstances, both the Virginia Supreme Court of Appeals¹³ and the federal courts¹⁴ have held that only one accident occurred and therefore the applicable limit was \$30,000. The United States District Court noted that ". . . the effect of the uninsured motorist law is *not* to provide coverage upon each and every *uninsured* vehicle, but upon the *insured* motorist. . . . [Emphasis added.] Assuming this view of the purpose and effect of the law to be sound, [there is] . . . no reason why the insurer may not limit his coverage, the limit of course to be not less than that required by the statute."¹⁵

The argument that the statute does not provide insurance coverage for the benefit of the uninsured motorist is also applied in those cases which refuse to allow a joint-tortfeasor's insurance company to obtain contribution from the injured insured's insurance company. In *Southern v. Lumbermans Mut. Cas. Co.*,¹⁶ plaintiff was injured while an occupant

12. *Id.* 203 Va. at 942, 128 S.E.2d at 447.

13. *Drewry v. State Farm Mut. Auto. Ins. Co.*, 204 Va. 231, 129 S.E.2d 681 (1963).

14. *State Farm Mut. Auto. Ins. Co. v. Drewry*, 191 F. Supp. 852 (W.D. Va. 1961) *aff'd*, 316 F.2d 716 (4th Cir. 1963).

15. *Id.* 191 F. Supp. at 860.

16. 236 F. Supp. 370 (W.D. Va. 1964).

in an automobile. She sued her uninsured driver, her own insurance company under its uninsured motorist endorsement, and the other driver's insurance company. The court granted summary judgment against the other driver's insurance company and required it to pay plaintiff her full damages. The other driver's insurance company contended that since the other joint-tortfeasor (plaintiff's driver) was uninsured, this brought the plaintiff's own uninsured motorist endorsement into play and her insurance company should therefore contribute toward paying the damages. In rejecting this contention, the federal court held that since the uninsured motorist law did not provide insurance for the uninsured motorist but only protection for the injured insured motorist against inadequate compensation, the injured party's insurance company would not be forced to contribute. The court stated that the other driver's insurance company could, however, obtain contribution from the uninsured motorist himself.¹⁷

As to the question of whether or not uninsured motorist coverage provides for the payment of punitive damages to its insured who is involved in an automobile accident with an uninsured driver, if one adheres to the stated purposes of the statutory provisions and the reasoning of the above cases, the answer to such a question must surely be "no." A recent South Carolina decision,¹⁸ following an uninsured motorist statute modeled after Virginia's, concluded that the statute did not provide for the payment of punitive damages. Later that same year, however, the South Carolina statute was amended so as to include within the term "damages," both actual and punitive damages.¹⁹ Such an amendment, or one similar to it, would be required before punitive damages could be awarded under the present Virginia uninsured motorist act.

COVERAGE OF THE NAMED INSURED, SPECIFIED RELATIVES, PERMITTEES, AND GUESTS

Before an injured person can claim the benefits of uninsured motorist coverage in Virginia he must meet two requirements. First, such a person must be involved in an accident with an uninsured motor ve-

17. *Accord*, *Hobbs v. Buckeye Union Cas. Co.*, 212 F. Supp. 349, 352 (W.D. Va. 1962), wherein the court reasoned as follows: "If [the insurance company] . . . is not an insurer of [the uninsured motorist] . . ., as we have seen it is not, what then in the nature of the insurance company's relationship to [the uninsured driver] . . .? It would seem that the delineation of contingent surety would be closer to the mark."

18. *Laird v. Nationwide Ins. Co.*, 234 S.C. 388, 134 S.E.2d 206 (1964).

19. S.C. CODE ANN. § 46-750.31 (Supp. 1964).

hicle; and, secondly, such person must qualify as an "insured".²⁰ Code section 38.1-381(c) specifically states that the term "insured" includes the following persons:

. . . the named insured and, while resident of the same household, the spouse of any such named insured, the relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, express or implied, or the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle. . . .²¹

The named insured refers, of course, to the person named in the policy.²² Also considered insured is the spouse of the named insured, so long as he or she resides in the named insured's household.²³ Included in the category of "insured" are the relatives of either the named insured or his spouse who reside in the named insured's household and who do not own their own car.²⁴ As the uninsured motorist statute is to be liberally construed in favor of the injured parties, it is reasonable to believe that relatives by affinity are also considered to be insured if they meet the other requirements.²⁵ Like the spouse, however, once the relatives cease residing in the household, they are no longer considered insured under the policy.²⁶

The named insured, the spouse, and their relatives, comprise what is commonly known in uninsured motorist law as the "first class" of insured persons.²⁷ A member of this class is protected twenty-four hours a day against the uninsured motorist, not only while using or occupying the insured vehicle and other vehicles, but also while a pedestrian.²⁸ For

20. *Nationwide Mut. Ins. Co. v. Harleysville Mut. Cas. Co.*, 203 Va. 600, 126 S.E.2d 840 (1962).

21. VA. CODE ANN. 1950 § 38.1-381(c) (Supp. 1964).

22. See Fargrave & Forney, *Uninsured Motorist Coverage*, 31 INS. COUNSEL J. 665 (1964).

23. *Southern Farm Bureau Cas. Ins. Co. v. Fulton*, 244 S.C. 559, 137 S.E.2d 769 (1964).

24. Uninsured motorist clauses generally exclude from coverage any automobiles owned by relatives, or spouse, of the named insured. See *State Farm Mut. Auto. Ins. Co. v. Smith*, — Va. —, 142 S.E.2d 562 (1965).

25. See Note, *Uninsured Motorist Coverage in Virginia*, 47 VA. L. REV. 145, 156 (1961).

26. *But cf. Appleton v. Merchants Ins. Co.*, 16 App. Div.2d 361, 228 N.Y.S.2d 442 (1962), wherein the insured's stepson was held entitled to claim benefits under uninsured motorist coverage because of an automobile accident which happened in Hawaii where the stepson was on military duty.

27. *Insurance Co. of North America v. Perry*, 204 Va. 833, 134 S.E.2d 418 (1964).

28. *Ibid.*; see Richardson & Doar, *The South Carolina Uninsured Motorist Law*, 15 S.C.L.Q. 739, 741 (1963).

example, in *Palletti v. Motor Vehicle Acc. Indemnification Corp.*,²⁹ the wife was the named insured and her husband, while on foot, was injured by a negligent uninsured motorist. The husband successfully recovered his damages against the insurance company under the uninsured motorist coverage issued to his wife.³⁰

The second class of insured persons contemplated by the uninsured motorist statute are permittees, that is, those who use, "with the consent, express or implied, of the named insured, the motor vehicle to which the policy applies"³¹ and those who are guests in such a vehicle. Permittees and guests, unlike persons of the first class, are covered by uninsured motorists benefits only while actually occupying, entering, or alighting from the insured car. To illustrate, in *Insurance Co. of North America v. Perry*,³² a policeman, in the performance of his duties, parked a city-owned police vehicle and walked some distance away. While walking, he was struck and killed by an uninsured motor vehicle. The deceased policeman's administrator asserted that the accident was covered under the uninsured motorist clause of the city's automobile liability policy. In striking down this assertion and in holding the police officer not covered by the policy, the court commented:

[T]he legislature, in enacting the uninsured motorist statute, intended to create two classes of insured persons, with different benefits accruing to each class. . . . [I]t is of crucial importance to note that while the legislature provided for coverage to the named insured and the specified members of his household, 'while in a motor vehicle or otherwise,' it expressly omitted the use of this language with relation to one 'who uses' the vehicle with permission. . . . It is our opinion that, as to a permissive user of an insured vehicle, the legislature intended . . . to provide protection only against an injury which occurs to one while using such vehicle.³³

The obvious intent of § 38.1-381(c) is to provide *uninsured motorist* coverage to permissive users in the same manner that § 38.1-381(a), the "omnibus clause," provides *liability* coverage to such persons. Both

29. 16 App. Div.2d 814, 228 N.Y.S.2d 768 (1962).

30. *Accord*, *Matwijko v. Walter Zolady Lumber Builders Supply & Fuel Corp.*, 16 App. Div.2d 1024, 203 N.Y.S.2d 77 (1964), a case in which an infant, also on foot, was injured by an uninsured motorist and was allowed to recover under his father's uninsured motorist coverage.

31. VA. CODE ANN. 1950 § 38.1-381(c) (Supp. 1964).

32. 204 Va. 833, 134 S.E.2d 418 (1964).

33. *Id.* 204 Va. at 836-838.

of these statutory provisions are aimed toward providing coverage to persons using the insured vehicle with the named insured's permission even though these people knew absolutely nothing about the owner's insurance policy. Under both the "omnibus clause" and the uninsured motorist statute, the determination of whether or not permission was given in a specific case must, of course, be decided upon the particular facts of that situation. The Virginia courts generally show a tendency to find "implied" permission when it would be to the advantage of the injured party and when there are enough facts upon which such a finding can be reasonably supported.³⁴

In order for a guest occupant in an automobile to qualify as an insured, such person must not only be in the vehicle to which the policy applies, but the vehicle must be in use by the named insured, one of the specified relatives, or a person who uses the car with the express or implied consent of the named insured.³⁵ For example, if an insured's daughter allows the insured vehicle to be driven by a friend without the insured's consent, and a guest in the vehicle is injured, then the guest is not covered under the uninsured motorist endorsement because of the lack of consent. The uninsured motorist statute was enacted to provide insurance coverage only to those persons specified in the statute and does not provide coverage to everyone.³⁶

THE UNINSURED MOTOR VEHICLE

An "uninsured automobile," as defined by Code subsection 38.1-381 (c) (i), is first of all a motor vehicle on which there is absolutely no liability insurance.³⁷ In addition, the above term includes a motor vehicle which has *some* liability insurance, but the limits of which are less than the amounts specified by § 46.1-1(8). For example, if an automobile

34. "In defining 'implied permission', and applying it to the facts of the many cases we have had, this court has been liberal in its interpretation and application, and has gone far in holding insurance carriers liable." *Fidelity & Cas. Co. v. Harlow*, 191 Va. 64, 69, 59 S.E.2d 872 (1950).

Virginia follows what is commonly referred to as the "minor deviation" rule, that is, it holds that once the user obtains original permission he is an insured until he deviates grossly from that permission. Conversely, if the use made of the vehicle is not a gross violation of the permission given, even though it amounted to a deviation, insurance coverage is still afforded the user. See, e.g., *Sordelett v. Mercer*, 185 Va. 823, 40 S.E.2d 289 (1946).

35. *Nationwide Mut. Ins. Co. v. Harleysville Mut. Cas. Co.*, 203 Va. 600, 125 S.E.2d 840 (1962).

36. *Id.* 203 Va. at 603.

37. See generally 7 AM. JUR.2D AUTO. INS. § 136 (1963).

has liability policy limits of only \$7,500 (one person), \$15,000 (one accident), and \$2,500 (property loss), the car would be considered "uninsured" according to the statutory command since Virginia requires limits of \$15,000, \$30,000, and \$5,000.³⁸ It is important to note, however, that the automobile is uninsured only to the extent that its own liability limits do not meet the statutory limits. Thus, the vehicle with the \$7,500-\$15,000-\$2,500 limits would be uninsured only to the extent that the injured person's claim exceeded those limits.³⁹

Secondly, by §§ 38.1-381(c)(ii), the definition of uninsured automobile includes a motor vehicle which has sufficient insurance "but the insurance company writing the same denies coverage thereunder. . . ." ⁴⁰ In order to recognize and appreciate the value of such a statutory provision, one need only look to the inequitable results reached in those jurisdictions which have no such provision. In New York, the uninsured motorist coverage is held to apply only where the automobile involved in an accident is "uninsured" in the strict sense of the word. Thus, where the insurance company of the driver causing the accident denied liability because of its insured's non-co-operation, this was held not to change the fact that the negligent driver's automobile was an insured vehicle at the time of the collision.⁴¹ Similarly, it has been held that an automobile which was insured at the time of the accident was *not* an uninsured motor vehicle where the insurance carrier became insolvent after the accident and became unable to satisfy claims.⁴²

Under the Virginia statute, such unfortunate results as those reached in the above decisions are not possible. In *McDaniel v. State Farm Mut. Auto. Ins. Co.*,⁴³ it was decided that a motor vehicle was an "uninsured automobile" within the meaning of the statute where the insurance com-

38. See Fargrave & Forney, *Uninsured Motorist Coverage*, 31 INS. COUNSEL J. 665, 667 (1964).

39. *Ibid.*

40. VA CODE ANN. 1950 §§ 38.1-381(c)(ii) (Supp. 1964).

41. *Vanguard Ins. Co. v. Polchlopek*, 257 N.Y.S.2d 740 (App.Div. 1965); *accord*, *Berman v. Travelers Indem. Co.*, 11 Misc.2d 291, 171 N.Y.S.2d 869 (1958).

In *McCarthy v. Motor Vehicle Acc. Indemnification Corp.*, 16 App. Div.2d 35, 224 N.Y.S.2d 909, *aff'd* 12 N.Y.S.2d 922, 238 N.Y.S.2d 101, 188 N.E.2d 405 (1963), the insured intentionally drove his car into another automobile and his insurance company denied liability on the ground that the assaulted person's injuries were not the result of an "accident". This denial of liability was held to have no effect on the fact that the assaulter's car was insured within the meaning of the New York statute.

42. *Hardin v. American Mut. Fire Ins. Co.*, 261 N.C. 67, 134 S.E.2d 142 (1964); *accord*, *Uline v. Motor Vehicle Acc. Indemnification Corp.*, 28 Misc.2d 1002, 213 N.Y.S.2d 871 (1961).

43. 205 Va. 815, 139 S.E.2d 806 (1965).

pany denied liability on the ground of non-co-operation though it did not deny liability until after the action was already commenced against its alleged insured. To hold otherwise ". . . would place a difficult, if not impossible, burden on the plaintiff to require him to ascertain in advance of bringing his suit that the insurance company which had issued a liability policy to the defendant had denied coverage thereunder."⁴⁴ Such a fair result is certainly in keeping with the avowed purpose of the Virginia uninsured motorist act—which is to insure justice to the injured party.

Also embraced within the definition of "uninsured motor vehicle" is the automobile whose owner or operator is "unknown".⁴⁵ The purpose of this inclusion is to meet the problems caused by the hit and run automobile—not only the usual hit and run of a pedestrian, but also accidents between two or more automobiles, one of whose drivers is, for one reason or another, "unknown". The problem of bringing suit against one's insurance company when injured by an unknown driver was considered in *Mangus v. John Doe*.⁴⁶ In that case, plaintiff alleged that while he was stopped at a traffic signal, an automobile driven by an unknown person struck his automobile from the rear. The plaintiff and the driver of the other car then got out of their vehicles to inspect for any damages, but the plaintiff did not obtain the other driver's name or license number. No report of this accident was made to the insurance company or to the police until four months later, when it became apparent that the plaintiff had suffered injuries. The court held that the uninsured motorist law gave plaintiff a right of recovery when injured

44. *Id.* 139 S.E.2d at 809.

S.C. CODE ANN. §§ 46-750.31(3)(b) (Supp. 1964) defines an "uninsured motor vehicle" as meaning an automobile as to which "there is nominally . . . insurance, but the insurance carrier writing the same successfully denies coverage thereunder. . . ." By virtue of S.C. CODE ANN. §§ 46-750.31(3)(c) (Supp. 1964), an automobile is also considered uninsured if "there was . . . insurance, but the insurance carrier who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable to fully respond to a judgment. . . ." In *North River Ins. Co. v. Gibson*, 244 S.C. 393, 137 S.E.2d 264 (1964), the receiver of an insolvent insurance company was held to have effectively "denied coverage" within the purview of the statute by notifying the defendant that the company lacked sufficient funds to continue defense of the tort action brought by the plaintiff; hence, the insurance company of the plaintiff was liable under its uninsured motorist endorsement. The same result has been reached under the Virginia act even though such statute is not quite so detailed and specific as that of South Carolina. *State Farm Mut. Auto. Ins. Co. v. Brower*, 204 Va. 887, 134 S.E.2d 277 (1964).

45. VA. CODE ANN. 1950 § 38.1-381(c) (Supp. 1964).

46. 203 Va. 518, 125 S.E.2d 166 (1962).

by an unknown motorist and that this right could not be qualified by requiring him to ascertain the identity of the other driver.

We recognize that this interpretation could open the door to the filing of fraudulent claims but persons who have valid causes of action should not be denied the right to recover because of the possibility of the presentation of fraudulent claims by others. If fraudulent claims do arise they may be ferreted out in the same manner in which courts and juries handle such situations in other cases.⁴⁷

A motor vehicle whose owner has qualified as a self-insurer is not, under the Virginia statute, considered to be an uninsured motor vehicle.⁴⁸ "The effect . . . is to exclude from the uninsured motorist coverage the damages caused by the negligence of an operator of the motor vehicle of a self-insured. . . ." ⁴⁹ In *Yellow Cab Co. of Virginia, Inc. v. Adinolfi*,⁵⁰ the driver of a cab was involved in an accident with an uninsured driver. Having obtained a judgment against the uninsured motorist, the cab driver sued his employer (the cab company) which was a self-insurer. The cab company's defense that the Virginia statutes do not require a self-insurer to provide uninsured motorist protection was held well taken. The court reasoned that since the Virginia uninsured motorist laws deal only with policies, contracts, and insurance companies, a self-insurer is not affected by these statutes. Truly, there is no real need to include under the uninsured motorist statute one who has qualified under Virginia law as a self-insurer, for such a person is deemed possessed of the financial ability to respond satisfactorily to judgments arising from the operation of his automobile; however, it is possible, as the instant case shows, that the employees of a self-insurer may suffer because they cannot collect their judgment from an uninsured motorist who is without funds.⁵¹

47. *Id.* 203 Va. at 520.

48. VA. CODE ANN. 1950 §§ 38.1-381 (c) (iv) (Supp. 1964).

49. *Yellow Cab Co. of Virginia, Inc. v. Adinolfi*, 204 Va. 815, 134 S.E.2d 308 (1964).

50. *Ibid.*

51. Also not included within the definition of "uninsured automobiles", and usually expressly excepted from coverage in uninsured motorist endorsements, are the following: motor vehicles owned by the United States of America, the Commonwealth of Virginia, a political subdivision thereof, or an agency of either; vehicles operated on rails; vehicles while located for use as residences and not as vehicles, such as house trailers used as residences; and vehicles or pieces of equipment designed for use principally off public roads, such as farm tractors, except while actually on the public highway. See Fargrave & Forney, 31 INS. COUNSEL J. 665, 667 (1964).

In addition, there are also several exclusions to be found in the usual uninsured motorist

JOHN DOE ACTIONS

In Virginia, when the driver of the vehicle responsible for causing injury or property damage is unknown, the injured party may institute suit against the unknown defendant as "John Doe".⁵² This fictitious person, John Doe, is created by the statute to substitute for the absent unknown motorist. In such action, the injured plaintiff is required to serve process upon his insurance company "... as though such insurance company were a party defendant; such company shall thereafter have the right to file pleadings and take other action allowable by law in the name of the owner or operator of the uninsured motor vehicle or in its own name. . . ." ⁵³

Despite the fact that the insurance company defends the action

endorsement. For example, the policy does not apply to injuries received by the insured while occupying an automobile (other than the insured vehicle) owned by the named insured, or his spouse if a resident of the same household. Neither does the coverage apply if the insured is struck by such a car. To illustrate, if a man has uninsured motorist coverage and his wife owns an uninsured vehicle, he cannot recover for injuries received while riding with his wife nor can he recover for injury sustained through being struck by her car. *Ibid.*

Further excluded from coverage, if the company so desires, is the first two hundred dollars of the total amount of property damage resulting from an automobile accident. VA. CODE ANN. 1950 § 38.1-381(b) (Supp. 1964).

52. VA. CODE ANN. 1950 § 38.1-381(e) (Supp. 1964).

53. *Ibid.*

In *John Doe v. Brown*, 203 Va. 508, 125 S.E.2d 159 (1962), the insurance company defended on the ground that the statute was unconstitutional because the provision for substituted service denied John Doe due process of law. Finding to the contrary, the court stated [203 Va. at 513]: "The defendant John Doe is a fictitious person created under the provisions of the statute to stand in the place of the unknown motorist. John Doe is not a person, but for the purpose of this proceeding speaks through the insurance company. The insurance company, which is the party ultimately liable under the provisions of its policy for a judgment obtained against John Doe . . . speaks and defends the action through and in the name of John Doe. Since John Doe is afforded the opportunity to defend the action through the insurance company, he has not been denied due process of law.

Similarly, in *John Doe v. Faulkner*, 203 Va. 522, 125 S.E.2d 169 (1962), the court struck down the insurance company's argument that since plaintiff's testimony was uncorroborated and since John Doe was "incapable" of testifying under Code section 8-286, plaintiff was precluded from obtaining judgment. To quote the court: "The operator of the 'John Doe automobile' is unavailable because his identity is unknown. The word *unavailable* is not synonymous with the word *incapable* used in the statute. A witness or party to a proceeding may be unavailable for various reasons, but he is not incapable merely because he is unavailable. Section 8-286 was adopted to provide protection for estates of persons laboring under a disability, or who are *incapable* of testifying. John Doe is not a person laboring under a disability or incapable of testifying. Hence the statute has no application in this crime." [203 Va. at 525].

as though it were a party defendant, the primary function of the John Doe action is to establish the tort liability of the unknown motorist and to establish the liquidated damages.⁵⁴ The liability of the insurance company under its uninsured motorist endorsement is *not* an issue in the John Doe action.⁵⁵ Any defenses relied on by the company must therefore relate to the tort and *not* to the endorsement since the latter is of a contractual nature. The judgment is rendered against John Doe and not against the insurance company. In order to collect under the uninsured motorist coverage, the plaintiff, once he obtains a judgment against John Doe, institutes a separate suit against the insurance company. In such action *ex contractu*, policy defenses may then be properly raised by the company.⁵⁶

Whenever the driver of the automobile causing the injury or damage is unknown, the Virginia statute requires “. . . the insured or someone on his behalf, in order to recover under the [uninsured motorist] endorsement, [to] . . . report the accident as required by § 46.1-400, unless such insured is reasonably unable to do so, in which event the insured shall make such report as soon as reasonably practicable. . . .”⁵⁷ And Code section 46.1-400 provides that “the driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of fifty dollars, or more, shall, within five days after the accident, make a written report of it to the Division [of Motor Vehicles]. . . .”⁵⁸ If the uninsured motorist

54. See Court, *Virginia's Experience with the Uninsured Motorist Act*, 3 W. & M. L. REV. 237 (1962).

55. *Rodgers v. Danko*, 204 Va. 140, 129 S.E.2d 829 (1963).

“Causes of action in tort cannot be joined with causes of action in contract according to the classic rule which has been followed in Virginia for some years.” PHELPS, HANDBOOK OF THE VIRGINIA RULES OF PROCEDURE IN ACTIONS AT LAW 142 (1959).

56. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964).

57. VA. CODE ANN. 1950 § 38.1-381(d) (Supp. 1964).

58. VA. CODE ANN. 1950 § 46.1-400 (REPL. VOL. 1958).

S.C. CODE ANN. § 46-750.34 (Supp. 1964), somewhat more stringent and detailed than the comparable Virginia statute, provides that there shall be no recovery under the uninsured motorist endorsement unless “(1) the insured or someone in his behalf shall have reported the accident to some appropriate police authority within a reasonable time, under all the circumstances, after its occurrence and unless (2) the injury was caused by physical contact with the unknown vehicle, and (3) the insured was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.” With this latter provision compare the much more liberal rule expressed in *Mangus v. John Doe*, 203 Va. 518, 125 S.E.2d 166 (1962). Also, Virginia does not require, as a prerequisite to recovery under the endorsement, that there be physical contact between the automobiles.

is *known*, however, there is no requirement under the uninsured motorist statute that such notice must be given the Division.

Recognized as a prerequisite to recovery against the insurance carrier, this requirement of notice has further emphasized the distinction made between the *ex delicto* John Doe action and the resulting *ex contractu* action against the insurer. In the former action, “. . . the giving of notice of the accident is not [necessary] . . . , for the action arises in tort and the only issue is the liability of the unknown party.”⁵⁹ In the *Brown* case,⁶⁰ which was a John Doe action, the court commented on this subject as follows:

This is not an action arising *ex contractu* to recover against the insurance company on its endorsement. The insurance company is not a named party defendant and judgment cannot be entered against it in this action. This is an action *ex delicto*, since the cause of action arises out of a tort, and the only issues presented are the establishment of legal liability on the unknown uninsured motorist, John Doe, and the fixing of damages, if any. This conclusion is strengthened by the language used in § 38.1-381(g) which reads: ‘. . . nor may anything be required of the insured [plaintiff] except the establishment of legal liability. . . .’ Hence an allegation in the motion for judgment that notice of the accident had been given to the Division of Motor Vehicles, or that plaintiff was reasonably unable to do so, was *not* a prerequisite to maintaining this action against John Doe.⁶¹

On the other hand, in an *ex contractu* action against the insurance company to collect the damages awarded against the uninsured motorist, the provision in the statute requiring that notice be given the Division of Motor Vehicles establishes a condition precedent to recovery. The effect on the insured's right to recover when another person files the accident report was the principal issue in *Nationwide Mut. Ins. Co. v. Sours*.⁶² The plaintiff, injured while driving a borrowed car, obtained a John Doe judgment in a suit defended by the insurance carrier. Then, in an action against the insurance company proper to enforce the judgment, the defense was made that the plaintiff had failed to make the required report. It appeared that a report was filed by the owner of the car plaintiff was driving, but not expressly for plaintiff's benefit.

59. *John Doe v. Brown*, 203 Va. 508, 511, 125 S.E.2d 159 (1962).

60. *Ibid.*

61. *Id.* 203 Va. at 515; *accord*, *Hodgson v. John Doe*, 203 Va. 938, 128 S.E.2d 444 (1962).

62. 205 Va. 602, 139 S.E.2d 51 (1964).

The court, in holding that such report satisfied the statute and enabled plaintiff to recover, noted that "... the report indicated that the plaintiff had been seriously injured in the accident, and to that extent was for her benefit. The filing of a duplicate report by the plaintiff would have served no useful purpose."⁶³

PROCEDURAL NICETIES

As in a proceeding against John Doe, an insured plaintiff instituting a suit against a *known* uninsured motorist also must serve process upon the insurance company as though such carrier were a party defendant. "[S]uch company shall thereafter have the right to file pleadings and take other action allowable by law in the name of the [known uninsured motorist] . . . or in its own name, provided, however, that nothing . . . shall prevent such [uninsured motorist] . . . from employing counsel of his own choice and taking any action in his own interest."⁶⁴ Thus, before the insurance company may be held liable, the statute commands that process must be served on the insurance carrier even in the *ex delicto* action against the uninsured motorist.⁶⁵

The necessity of compliance with the above statute was well illustrated by the situation presented in *Createau v. Phoenix Assur. Co.*⁶⁶ The injured plaintiff instituted suit against the negligent uninsured motorist, then, in the instant action, sought to recover from the insurance carrier under the terms of its uninsured motorist endorsement. The court found for the insurance company, holding that plaintiff's failure to comply with the mandatory requirements of §§ 38.1-381(e)(1) in the first action was fatal to her case in the second. Nor had the insurance company waived its statutory rights when it received actual notice of the time and place of the first action and had sent an observer to the trial. The court approved the doctrine that "the presence of an unserved defendant, though accompanied by an attorney, merely as a spectator, when the case is called, is not a submission to the jurisdiction of the court, unless in some way he participates in the proceedings therein."⁶⁷

63. *Id.* 205 Va. at 606.

64. VA. CODE ANN. 1950 §§ 38.1-381(e)(1).

65. *In State Farm Mut. Auto. Ins. Co. v. Duncan*, 203 Va. 446, 125 S.E.2d 154 (1964), it was held that this statutory provision was as much a part of the insurance contract as if expressly written therein.

66. 202 Va. 641, 119 S.E.2d 336 (1961).

67. *Id.* 202 Va. at 644, quoting *Crockett v. Reynolds*, 76 W.Va. 763, 766, 86 S.E. 887 (1915).

The above decision, while unfortunate in its end result, does not derogate from the liberal intent and aims of the uninsured motorist laws. It is necessary to have procedural safeguards; and, although in this particular situation they worked to the advantage of the carrier, in other instances these safeguards are just as advantageous for the injured party, or even for the uninsured motorist. For instance, it has been determined that *ex delicto* actions are not removable from the state court to a federal district court on a petition filed only by the insurance company alone and not in behalf of, or accompanied by a like petition of, the uninsured motorist.⁶⁸ "*Assuming arguendo* that the insurance carrier is a defendant within the meaning of the Virginia Uninsured Motorist statute . . ., and *assuming* also that said insurance carrier is a defendant within the meaning of 28 U.S.C.A. § 1441 . . .",⁶⁹ the cause of action against the insurance company is neither separate nor independent from that against the uninsured motorist. Therefore, there can be no removal by the insurance company in the absence of a like petition by the uninsured motorist. There is, however, ". . . every indication that the insurance company . . . [may file] a petition for removal in the name of the defendant [uninsured motorist]." ⁷⁰

In *Ivory v. Nichols*,⁷¹ the inquiry was whether or not an insurance company which had filed pleadings and taken other action in its own name in the *ex delicto* action was an "adverse party" to whom interrogatories could be directed pursuant to Rule 33 of the Federal Rules of Civil Procedure. Answering emphatically that interrogatories could be so directed, the court reasoned that "to hold otherwise would foreclose the right of the insurance company—filing pleadings and taking other action allowable by law in its own name—to resort to many of the Federal Rules of Civil Procedure."⁷² The court recognized that while ". . . action by an insurance company in filing pleadings [in the *ex delicto* action] . . . does not, in itself, subject the insurance carrier to the payment of a judgment rendered against the [uninsured motorist] . . . it would appear that [the carrier] . . . by answering the complaint comes within the framework of Rule 33 and is an 'adverse party'." ⁷³

Venue presents a procedural problem under the Virginia uninsured

68. *Orlikowski v. Mearns*, 212 F. Supp. 37 (E.D. Va. 1962).

69. *Id.* 212 F. Supp. at 38.

70. *Ibid.*

71. 34 F.R.D. 128 (E.D. Va. 1963).

72. *Id.* at 129.

73. *Ibid.*

motorist laws, for there are no statutory provisions relating to the proper venue for an action against an unknown motorist. When the uninsured motorist is identified, the action is brought in the county wherein the defendant motorist resides; however, if the motorist is unknown, then obviously venue cannot be based upon his residence. This problem has led to a dispute between theorists and essayists on the one hand, and the Virginia courts on the other. The former contend that since the insurance company is not technically a party defendant, venue cannot be fixed by the carrier's residence; therefore, the venue may only be laid where the cause of action arose.⁷⁴ Hence, under this view, if a Virginian having uninsured motorist coverage was involved in an accident in Tennessee with an unknown motorist, then the laws of the forum (Tennessee) where the mishap occurred would control the tort action.⁷⁵ Then, the Virginian would institute an action in Virginia against his insurance carrier for collection of the judgment.⁷⁶

The foregoing view is not the law in Virginia today. Indeed, the Virginia Supreme Court of Appeals has emphatically stated that while the insurance company is not "technically" a party defendant, it is considered a defendant for all practical purposes, including that of determining venue of the *ex delicto* action against John Doe.

Since John Doe is a fictitious person and has no place of abode apart from the insurance company, and since notice of the action must be served on the insurance company which defends the action in the name of John Doe, it may reasonably be concluded, for the purpose of venue, that the action may be treated as being against the real defendant, the insurance company, and thus permit the plaintiff to have the protection for which he has paid. . . . [T]herefore, . . . the venue for the John Doe action, which is not specifically fixed by the uninsured motorist law, is to be determined under the general venue statutes as if the action against John Doe were against the insurance company itself.⁷⁷

THE INSURANCE COMPANY AS "GUARANTOR"

When the injured insured obtains judgment against an unknown motorist and collects the amount of the judgment, or any part of it,

74. See, e.g., Richardson & Doar, *The South Carolina Uninsured Motorist Law*, 15 S.C.L.Q. 739, 746 (1963); Note, 47 VA. L. REV. 145, 163 (1961).

75. See dissenting opinion of Whittle, J., in *Hodgson v. John Doe*, 203 Va. 938, 944, 128 S.E.2d 444 (1962).

76. See Richardson & Doar, *supra* note 74, at 746.

77. *Hodgson v. John Doe*, 203 Va. 938, 943, 128 S.E.2d 444 (1962); see PHELPS, HANDBOOK OF THE VIRGINIA RULES OF PROCEDURE IN ACTIONS AT LAW (Supp. 1964 at 95).

from his insurance company under its policy of uninsured motorist coverage, the insurance carrier is then subrogated to the insured's rights against the uninsured motorist to the extent of the payment.⁷⁸ This simply means that the carrier is substituted in place of, and succeeds to the rights of, the injured insured in relation to the latter's claims against the uninsured motorist. But what happens in the John Doe situation when, after the claim has been paid by the insurance company, the identity of the negligent motorist becomes known? The Virginia statute provides a specific answer: the former John Doe suit is held to be *no bar* to the bringing of a new action by the insured against the now identified tortfeasor, provided, however, that any recovery be paid over to the insurance company to the extent the carrier previously paid the insured.⁷⁹ The insurance company, nevertheless, is required to pay its proportionate part of the costs and expenses incurred in this subsequent suit, including reasonable attorney's fees.⁸⁰

The total effect of the above provision, combined with the other sections of the Virginia uninsured motorist law, is to place the insurance carrier in the position of guarantor, thereby making certain that the injured insured is guaranteed payment of his claims against the uninsured or unknown motorist.⁸¹ In addition, "subparagraph (g) prevents the 'fine print' of the contract of insurance from defeating the intent of the law . . ." ⁸² by stating "nor may anything be required of the insured except the establishment of legal liability." ⁸³ The admitted purpose of such statutory language, above all else, is to insure adequate protection for the injured.⁸⁴

78. VA. CODE ANN. 1950 § 38.1-381(f) (Supp. 1964).

79. *Ibid.*

Subrogation rights under § 38.1-381(h) (Supp. 1964), which deals with the problems caused when both the uninsured motorist law and the workmen's compensation laws cover the same accident, are dealt with in *Horne v. Superior Life Ins. Co.*, 203 Va. 282, 123 S.E.2d 401 (1962).

80. *Ibid.*

81. *Accord*, *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 135 S.E.2d 841 (1964).

82. Court, *Virginia's Experience with the "Uninsured Motorist Act"*, 3 W. & M. L. REV. 237 (1962).

83. VA. CODE ANN. 1950 § 38.1-381(g) (Supp. 1964).

84. Virginia has also eliminated the two-step process of trial and arbitration by specifically providing that no policy shall contain any provision requiring arbitration of any claim arising under the uninsured motorist provisions. VA. CODE ANN. 1950 § 38.1-381(g) (Supp. 1964); see Aksen, *Arbitration Under the Uninsured Motorist Endorsement*, 1965 INS. L. J. 17, 20; Note, *The Uninsured Motorist: A Look at the Various Statutes*, 15 W. RES. L. REV. 386 (1964).

ELIMINATION OF THE "OTHER INSURANCE CLAUSE":
THE BRYANT DECISION

Previous to 1965, it was common practice to insert in the usual uninsured motorist policy a clause which stated that the instant coverage would apply only as excess insurance over any other similar insurance available to the insured and only in the amount by which the limits of this coverage exceeded the limits of liability of the other insurance. To illustrate the effect of such a provision, let us assume that the insured is riding as a guest in an automobile, not owned by him, which is covered by an uninsured motorist policy. He is covered by the policy on the car which belongs to his host; he is also covered by his own policy, but only to the extent that his own policy limits exceed the limits of his host's policy. Thus, if his host has the usual \$15,000-\$30,000-\$5,000 limits and the insured also has these \$15,000-\$30,000-\$5,000 limits, his own policy provides no coverage whatsoever, that is, if the "other insurance" clause is valid.⁸⁵

In a somewhat more complicated factual situation than that above, *Travelers Indem. Co. v. Wells*⁸⁶ held that the "other insurance" clause was completely valid under Virginia law. There, the limits of the host's policy were identical to the limits under the insured's policy; however, since the \$30,000 limit of the host's policy was exhausted by being paid to other injured parties, the guest could not collect. The court decided that the guest was not covered under his own policy because of the "other insurance" clause, in spite of the fact that the "other insurance" was for practical purposes unavailable to the guest. The court held that the Virginia uninsured motorist law "did not propose to provide an injured guest with protection beyond the statutory limits through a combination of the host's insurance and that owned by the guest for himself."⁸⁷

Both the reasoning and the result reached in the *Wells* case are vulnerable to criticism. Disregarding, for the moment, the obvious criticism based on the intent and purpose of the uninsured motorist statute, there is no real reason, statutory or logical, for completely depriving the injured party of any recovery. Both the injustice of the result and the fallacy of the court's reasoning, led to much criticism.

85. See Fargrave & Forney, *Uninsured Motorist Coverage*, 31 INS. COUNSEL J. 665, 669 (1964).

86. 316 F.2d 770 (4th Cir. 1963), *reversing* 209 F. Supp. 784 (W.D. Va. 1962).

87. *Id.* at 773.

While there may be sound reason for preventing an insured under . . . [uninsured motorist] coverage from recovering more than the policy limits under his own policy . . . , there seems little reason for wording the 'other insurance' clause so as to deprive . . . [the guest] of any recovery at all irrespective of whether he participated in the proceeds of the other policy. . . . It . . . [can] be argued that a clause of that sort involves taking away with the left hand what the right hand has promised earlier in the policy where the company promises to pay claims arising when the insured is injured while riding as a passenger in another automobile.⁸⁸

In *Bryant v. State Farm Mut. Auto. Ins. Co.*,⁸⁹ the breakthrough was achieved when the highest court of Virginia reached a result directly contrary to the *Wells* case. The *Bryant* decision held that "other insurance clauses," being in conflict with the Virginia uninsured motorist law, were invalid. After reviewing the principal uninsured motorist decisions in Virginia, the court made the following observations:

[The] cases all established that the controlling instrument is the statute and that provisions in the insurance policy that conflict with the requirements of the statute, either by adding to or taking from its requirements, are void and ineffective.⁹⁰

Section 38.1-381(b) of the Code. . . commands that *no policy* of bodily injury liability insurance shall be issued or delivered unless it undertakes to pay the insured 'all sums' he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle within the limits of the policy. That is plain language. It means that every such policy shall so provide. . . . The limit of the recovery of the plaintiff under any or all insurance policies carrying the uninsured motorist provision required by § 38.1-381(b) would be the amount of the insured's judgment against the uninsured motorist.⁹¹

The rule laid down in the *Bryant* decision has now been approved by the federal courts. On June 4, 1965, the federal court for the Eastern District of Virginia decided *Pulley v. Allstate Ins. Co.*,⁹² wherein it was noted that "the Supreme Court of Appeals of Virginia is the final word

88. 7 APPLEMAN, INSURANCE LAW & PRACTICE 27-28 (Supp. 1965).

89. 205 Va. 897, 140 S.E.2d 817 (1965).

90. *Id.* 205 Va. at 900.

91. *Id.* 205 Va. at 901.

92. 242 F. Supp. 330 (E.D. Va. 1965).

on the interpretation of any state statute which raises no federal question. . . . [The] *Wells* case is no longer the law.”⁹³

CONCLUSION

If it be conceded that the purpose of the Virginia uninsured motorist legislation is to provide protection for the insured person against injury and damage caused him by the negligence of an uninsured or unknown motorist, then it can scarcely be denied that the statute, as explained and applied in court decisions, has succeeded handily in achieving that purpose. There are still, of course, problems to be worked out as is the case with nearly all new legislation. The amazing thing is that there are so few problems in such a revolutionary (for Virginia) enactment. The statute has successfully gone into detail to assure the injured party of complete justice and, at the same time, has preserved the basic rights of the insurance company, the uninsured driver, and third parties, while putting no additional burdens upon the state. The principles utilized in the uninsured motorist law, basically social and humanitarian in intent and purpose, have taken hold and flourished quite surprisingly well in the fundamentally conservative soil of Virginia. The commendable development of these principles in our Commonwealth bodes well for the future, for the rising problems of tomorrow's complicated society cannot be conquered by methods which served so well in the past but are fast becoming useless; they can only be met with weapons forged from ideas as new as the problems they are called upon to face.

James L. Tucker

93. *Id.* at 335.