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## Vii. Insurance Law

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## VII. INSURANCE LAW

*Defining the Scope of Uninsured Motorist Coverage in Virginia:  
Harleysville v. Nationwide*

The Virginia General Assembly enacted the Uninsured Motorist Statute<sup>1</sup> in 1958 to address the growing problem of uncompensated automobile accident victims in Virginia.<sup>2</sup> The Uninsured Motorist Statute requires every automobile liability policy issued in Virginia to include a provision against the risk of injury caused by a negligent, financially irresponsible motorist.<sup>3</sup> A financially irresponsible motorist is a motorist who neither buys insurance nor has financial resources sufficient to compensate automobile accident victims.<sup>4</sup> Before receiving compensation from his uninsured motorist carrier

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1. VA. CODE ANN. § 38.2-2206 (Repl. Vol. 1986).

2. See A. WIDISS, UNINSURED AND UNDERINSURED MOTORIST INSURANCE 1-15 (2d ed. 1985) [hereinafter A. WIDISS]. To protect the public from the increasing number of financially irresponsible motorists, various state legislatures enacted financial responsibility laws in the 1930s that encouraged motorists to acquire insurance if the motorist lacked resources adequate to satisfy potential damage claims for serious injuries. *Id.* at 6. The financial responsibility laws were inadequate because of the huge increase in the number of automobiles and automobile accidents after World War II that resulted in a growing problem of uncompensated automobile accident victims. *Id.* Accordingly, various state legislatures considered enacting compulsory insurance laws or creating state unsatisfied judgment funds. *Id.* at 11. The insurance industry suggested a new uninsured motorist coverage that indemnified victims for injuries caused by negligent, uninsured motorists. *Id.*; see also Note, *The Uninsured Motorist Coverage in Virginia and New Underinsurance Provisions*, 69 VA. L. REV. 355, 357 n.4 (1983) (discussing growing number of uncompensated automobile accident victims); I. SCHERMER, 2 AUTOMOBILE LIABILITY INSURANCE 23.01 (2d ed. 1986) (state authorities became more aware that victims of financially irresponsible motorists were increasing). By 1978, 48 states had enacted uninsured motorist statutes that reflected the proposal of the insurance industry. SCHERMER at 23.01.

3. VA. CODE ANN. § 38.2-2206(A) (Repl. Vol. 1986). Section 38.2-2206 (A) of the Virginia Uninsured Motorist Statute applies to all motor vehicle insurance policies issued to any vehicle principally used or garaged in Virginia. *Id.* The limits of the uninsured motorist coverage mandated by section 38.2-2206 (A) match the limits of the insured's liability insurance coverage. *Id.*; see Note, *supra* note 2, at 355-57 (1983) (discussing history and enactment of Virginia's uninsured motorist statute). The Virginia General Assembly favored the new coverage over previous financial responsibility laws because the insurance more effectively protected innocent victims of uninsured motorists. Note, *supra* note 2, at 355-57; see *Hobbs v. Buckeye Union Gas Co.*, 212 F.Supp. 349, 352 (W.D. Va. 1962) (object of statute is to afford additional protection in event of accident with uninsured motorist); *Travelers Indem. Co. v. Wells*, 209 F. Supp. 784, 791 (W.D. Va. 1961) (in enacting Uninsured Motorist Statute, Virginia General Assembly intended to provide benefits and to protect insured motorists, their families, and permissive users of their vehicles) *reversed on other grounds* 316 F.2d 770.

4. VA. CODE ANN. § 38.2-2206 (B) (Repl. Vol. 1986). Section 38.2-2206 (B) of the Virginia Code defines an uninsured motorist vehicle as a motor vehicle that has no bodily injury liability insurance in the amounts specified by section 46.1-1(8). VA. CODE ANN. § 38.2-2206 (B) (Repl. Vol. 1986); see VA. CODE ANN. § 46.1-1(8) (providing minimum automobile liability policy limits). The minimum insurance limits for uninsured motorists are the same as

for injuries caused by an uninsured motorist, a claimant must secure a judgment against the negligent, uninsured motorist.<sup>5</sup> The claimant's judgment establishes the legal liability of the uninsured motorist and entitles the claimant to a recovery under the uninsured motorist coverage of his insurance policy.<sup>6</sup> After the insurance carrier has paid benefits to the claimant, the statute subrogates the insurance carrier to the claimant's rights against the uninsured motorist.<sup>7</sup>

Although Virginia's Uninsured Motorist Statute provides protection for an insured against negligent, uninsured motorists, the legislature did not define explicitly the scope of protection mandated by the statute.<sup>8</sup> For example, the Virginia statute is silent on whether an injured claimant may seek compensation under his uninsured motorist coverage for injuries caused by a negligent, uninsured motorist if compensation is available from a joint tortfeasor involved in the same accident.<sup>9</sup> In *Harleysville Mutual Insurance Co. v. Nationwide Mutual Insurance Co.*<sup>10</sup> the United States Court of Appeals for the Fourth Circuit considered whether a plaintiff who has

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the minimum liability limits for ordinary liability insurance. VA. CODE ANN. § 46.1-1 (8) (Repl. Vol. 1986). The minimum liability limits for automobile insurance policies issued in Virginia are \$25,000 to one person per accident for bodily injury or death, \$50,000 to more than one person for bodily injury or death, and \$10,000 for property damages. *Id.*

Furthermore, section 38.2-2206 (B) of the Virginia Code provides that a vehicle is uninsured if a motorist has insurance coverage within the statutory minimum but the insurer denies coverage for any reason. VA. CODE ANN. § 38.2-2206 (B) (Repl. Vol. 1986). Section 38.2-2206 (B) also provides that a motor vehicle is uninsured if its owner or operator is unknown. *Id.*

5. See Note, *supra* note 2, at 358 n.6 (plaintiff first must obtain judgment against uninsured motorist that establishes liability of uninsured motorist carrier).

6. See *Midwest Mut. Ins. Co. v. Aetna Casualty & Sur. Co.*, 216 Va. 926, 928, 223 S.E.2d 901, 902 (1976) (holding that judgment is event that establishes legal entitlement to recovery from owner or operator of uninsured vehicle); A. WIDISS, *supra* note 2, at 45 (most states do not require insured to obtain judgment before he may collect under his uninsured motorist coverage).

7. See VA. CODE ANN. § 38.2-2206(G) (1986) (providing that uninsured motorist carrier has right of subrogation to insured's claims against negligent tortfeasor); see, e.g., *White v. Nationwide Mut. Ins. Co.*, 361 F.2d 785, 787 (1966) (uninsured motorist carrier has right of subrogation when insured has received full satisfaction of his judgment against uninsured driver); *General Accident, Fire & Life Assurance, Corp. v. Aetna Casualty & Sur. Co.*, 208 Va. 467, 471-72, 158 S.E.2d 750, 754 (1968) (after paying insured victim, statute subrogates victim's insurer to all of victim's rights against uninsured motorist); *United States Fidelity Guar. Co. v. Byrum* 206 Va. 815, 818, 146 S.E.2d 246, 248 (1966) (same); see also D. DOBBS, *HANDBOOK ON THE LAWS OF REMEDIES* 250-52 (1973) ("subrogation" allows one person to take second person's place regarding latter's legal rights and remedies against third person). Subrogation originated as an equitable remedy that prevented the unjust enrichment of the insurer. *Id.*

8. See *supra* note 3 and accompanying text (discussing scope of Virginia's uninsured motorist statute).

9. See *infra* notes 16-18 and accompanying text (*Harleysville* court considering whether Virginia's Uninsured Motorist Statute provides protection to insured when adequate compensation is available).

10. 789 F.2d 272 (4th Cir. 1986).

obtained a judgment against both an insured and uninsured motorist may satisfy the judgment under his uninsured motorist coverage before exhausting the insured's liability insurance.<sup>11</sup>

In *Harleysville* Joel Hollingsworth sustained injuries in an automobile accident with two other motorists.<sup>12</sup> Richard Baker, one of the other two motorists, was an employee of LaValleys Wholesale Florist, Inc., which owned the company truck that Baker was driving.<sup>13</sup> The identity of the third motorist involved in the accident was unknown.<sup>14</sup> Hollingsworth obtained a joint and several judgment of \$100,000.00 in the Circuit Court of Henry County against Baker, LaValleys, and the unknown motorist.<sup>15</sup> LaValleys' insurance carrier, Harleysville Mutual, voluntarily paid Hollingsworth \$50,000 of the judgment.<sup>16</sup> Hollingsworth then demanded in writing that his insurance carrier, Nationwide Mutual, satisfy the judgment under his policy's uninsured motorist coverage.<sup>17</sup> Nationwide refused Hollingsworth's demand because LeValleys' insurance coverage with Harleysville exceeded Hollingsworth's entire judgment.<sup>18</sup> Harleysville Mutual petitioned the Circuit Court of Henry County, Virginia, to declare the rights and liabilities of the two respective insurance companies regarding Holling-

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11. *Id.* at 273-74.

12. *Id.* at 273.

13. *Id.* In *Harleysville* LaValleys insured the truck that Baker was driving with a liability insurance policy issued by Harleysville Mutual Insurance Company that contained a liability limit of \$300,000 for bodily injury to one person. *Id.*

14. *See id.* (neither Baker nor Hollingsworth could establish identity of unknown motorist). The unknown motorist in *Harleysville* had driven onto the highway in front of Baker's truck, causing the truck to jackknife. *Id.* Hollingsworth, driving directly behind the truck, was unable to stop his vehicle in time to avoid the collision. *Id.*

15. *Harleysville*, 789 F.2d at 273; *see* VA. CODE ANN. § 38.2-2206 (B) (Repl. Vol. 1986) (statute provides that if owner or operator is unknown, then motor vehicle is uninsured). Section 38.2-2206 (E) of the Virginia Code provides that when the driver of a motor vehicle responsible for damages is unknown, the injured party may sue the unknown tortfeasor as "John Doe." VA. CODE ANN. § 38.2-2206 (E) (Repl. Vol. 1986); *see also* John Doe v. Brown, 203 Va. 508, 509, 125 S.E.2d 159, 160 (1962) (defendant John Doe is fictitious person created under Uninsured Motorist Statute to stand in place of unknown motorist); Comment, *Virginia's Experience with the Uninsured Motorist Act*, 3 W. & M. L. REV. 237, 239 (1962) (although injured insured's insurance company defends John Doe action as though it were party defendant, primary function of action is to establish liability of unknown motorist and to assess damages).

16. *See Harleysville*, 789 F.2d at 273 (pending outcome of Harleysville's declaratory action in Henry County Circuit Court, Harleysville paid Hollingsworth \$50,000 under LaValleys' liability insurance policy).

17. *Id.* In *Harleysville* Hollingsworth demanded the entire \$100,000 judgment from Nationwide pursuant to his uninsured motorist coverage. *Id.* Nationwide had insured Hollingsworth with an automobile liability insurance policy containing an uninsured motorist provision limit of \$100,000. *Id.* Explaining that a plaintiff can receive only one satisfaction of his judgment, however, the district court in *Harleysville* found that Hollingsworth could request only the remaining balance of \$50,000. *Id.*

18. *Id.* at 273.

sworth's judgment.<sup>19</sup> Based on diversity of citizenship, Nationwide removed the action to the United States District Court for the Western District of Virginia.<sup>20</sup> The district court declared that Harleysville should pay the entire \$100,000 judgment rendered against Baker, LaValleys, and the unknown motorist.<sup>21</sup> The district court stated that Hollingsworth's uninsured motorist coverage should satisfy the judgment only if no other source of indemnification existed.<sup>22</sup> The district court determined that Nationwide was not liable to Hollingsworth under his uninsured motorist coverage because LaValleys' coverage under its policy with Harleysville exceeded Hollingsworth's entire judgment.<sup>23</sup> The district court concluded that Hollingsworth, therefore, must proceed directly against Harleysville to satisfy the entire judgment.<sup>24</sup> Subsequently, Harleysville appealed to the Fourth Circuit.<sup>25</sup>

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19. *Id.* In *Harleysville*, Harleysville's complaint named as parties Harleysville, Nationwide, Hollingsworth, and the unknown motorist. *Id.*; see W. RITZ, VIRGINIA AUTOMOBILE LIABILITY INSURANCE, 21-1 (1983 & Supp. 1984). When disputes arise concerning automobile liability coverage under a single policy, or two or more policies, an insurance carrier may resolve the dispute through a declaratory judgment proceeding. W. RITZ, *supra*, at 21-1. Ordinarily, an insurance carrier will join all of the parties so that the decision will bind each of them. *Id.*

20. *Harleysville*, 789 F.2d at 273; see *Harleysville Mut. Ins. Co. v. Nationwide Mut. Ins. Co.*, 605 F.Supp. 133, 135 (W.D. Va. 1985) (district court determined that John Doe was not indispensable party and that plaintiff had established requisite diversity to maintain federal jurisdiction).

21. *Harleysville*, 789 F.2d. at 273; see *Harleysville Mut. Ins. Co. v. Nationwide Mut. Ins. Co.*, 605 F. Supp. 133, 136 (W.D. Va. 1985). The district court in *Harleysville* determined that Hollingsworth had a source of recovery from LaValleys' policy with Harleysville. *Id.* The district court held that because LaValleys' applicable policy limits were greater than Hollingsworth's total judgment, Hollingsworth should proceed directly against Harleysville. *Id.*

22. See *Harleysville*, 605 F. Supp. at 136. In considering Harleysville's claim that Nationwide was obligated to pay one-half of Hollingsworth's judgment against Harleysville and John Doe, the district court in *Harleysville* reasoned that if Nationwide paid one-half of Hollingsworth's judgment to Harleysville, then Harleysville would benefit from Hollingsworth's uninsured motorist coverage. *Id.* The district court cited a previous Fourth Circuit decision to support that uninsured motorist coverage should not benefit anyone other than the insured. See *Southern v. Lumberman's Mut. Casualty Co.* 236 F. Supp. 370, 372 (W. D. Va. 1964) (because Virginia General Assembly intended that uninsured motorist coverage should benefit only injured insured, other joint tortfeasor could not seek contribution from uninsured motorist carrier). The district court in *Harleysville* held that indemnification by an uninsured motorist carrier should not benefit anyone other than the insured. *Harleysville*, 605 F. Supp. at 136.

23. *Harleysville*, 605 F. Supp. at 136. In considering the uninsured motorist provision in Nationwide's policy to Hollingsworth, the district court in *Harleysville* found that Nationwide was not liable under any theory of contract or contribution. *Id.* The district court reasoned that Hollingsworth's uninsured motorist coverage was available only if no other source of compensation was available. *Id.* Noting that LaValleys' \$300,000 policy limit exceeded Hollingsworth's entire judgment, the district court held that Nationwide was not liable to Hollingsworth pursuant to his uninsured motorist coverage. *Id.*

24. *Id.* The district court in *Harleysville* held that Hollingsworth's judgment entitled him to collect the entire \$100,000 judgment against Harleysville. *Id.* The district court also held that Nationwide had no liability under Hollingsworth's uninsured motorist coverage because LaValley's insurance policy limits exceeded the total amount of the judgment. *Id.* Finally, the district court declared that Hollingsworth should proceed directly against Harleysville to collect the entire judgment. *Id.*

25. *Harleysville*, 789 F.2d at 273.

On appeal the Fourth Circuit in *Harleysville* noted that in Virginia a personal injury plaintiff has the right to elect from which joint tortfeasor he will collect his judgment.<sup>26</sup> The Fourth Circuit determined that Hollingsworth could satisfy his judgment against any of the three defendants because Hollingsworth had obtained a judgment against Baker, LaValleys, and the unknown motorist.<sup>27</sup> Therefore, the Fourth Circuit affirmed the district court's holding that Hollingsworth was entitled to receive the entire judgment from *Harleysville*.<sup>28</sup>

In considering *Harleysville*'s contention that the district court erred in finding that Nationwide was not liable to Hollingsworth, the Fourth Circuit examined the terms of the insurance policy that Nationwide had issued to Hollingsworth.<sup>29</sup> The Fourth Circuit found that Nationwide had contracted with Hollingsworth to compensate Hollingsworth for any injuries that he sustained in an accident with the owner or operator of an uninsured motor vehicle.<sup>30</sup> In addition to Nationwide's contractual obligation, the Fourth Circuit also considered the remedial purposes of Virginia's Uninsured Motorist statute to determine that Hollingsworth's policy obligated Nationwide to pay Hollingsworth.<sup>31</sup> The Fourth Circuit determined that the district court's judgment in favor of Hollingsworth established the joint liability of the unknown motorist.<sup>32</sup> The *Harleysville* court held that, therefore, the uninsured motorist provision in Hollingsworth's policy obligated Nationwide to satisfy the judgment if Hollingsworth sought collection from Nationwide.<sup>33</sup> Concluding that an insurance carrier should not deprive an insured of his uninsured motorist coverage, the Fourth Circuit in *Harleysville*

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26. *Id.*; see VA. CODE ANN. § 8.01-443 (Repl. Vol. 1986) (providing no bar to plaintiff's action until full satisfaction of judgment).

27. *Harleysville*, 789 F.2d at 273; see VA. CODE ANN. § 8.01-443 (Repl. Vol. 1986) (after obtaining judgment against several joint tortfeasors, plaintiff can proceed to collect his judgment from joint tortfeasor of his choice, but can have only one satisfaction of judgment).

28. *Harleysville*, 789 F.2d at 275.

29. See *Harleysville*, 789 F.2d at 274 (Fourth Circuit found that Nationwide had contracted to pay Hollingsworth for any injuries caused by negligent, uninsured motorist).

30. See *id.* (discussing Nationwide's liability insurance policy issued to Hollingsworth that undertook to pay Hollingsworth all damages legally attributable to uninsured motorist).

31. *Id.*

32. *Id.*; see *supra* note 6 and accompanying text (judgment against owner or operator of uninsured motor vehicle is event that legally entitles plaintiff to recovery from his uninsured motorist coverage).

33. See *Harleysville*, 789 F.2d at 274 (Fourth Circuit determining that Nationwide was liable contractually to Hollingsworth). The Fourth Circuit in *Harleysville* noted that for the payment of a premium, Nationwide had promised to compensate Hollingsworth for any of his injuries caused by an uninsured motorist. *Id.* The Fourth Circuit reasoned that Hollingsworth, therefore, could elect to recover from Nationwide under his policy's uninsured motorist coverage. *Id.*; see General Accident Fire & Life Assurance Corp., v. Aetna Casualty & Sur. Co., 208 Va. 467, 473, 158 S.E.2d 750, 755 (1968) (insurer's liability is contractual in nature and arises under Uninsured Motorist Law when court of competent jurisdiction establishes liability of uninsured motorist).

reversed the district court's holding that Nationwide was not liable to Hollingsworth.<sup>34</sup>

Having determined that Nationwide was liable to Hollingsworth, the Fourth Circuit addressed Harleystville's final claim, that the district court incorrectly held that Hollingsworth should collect the entire judgment directly from Harleystville.<sup>35</sup> The *Harleystville* court stated that even if Nationwide satisfied all or part of Hollingsworth's judgment, Nationwide's statutory right of subrogation enabled Nationwide to pursue any other source of contribution available to Hollingsworth.<sup>36</sup> The *Harleystville* court held that Nationwide, therefore, could seek reimbursement from Hollingsworth's claim against Baker, LaValleys, and their insurer, Harleystville.<sup>37</sup> Accordingly, the Fourth Circuit affirmed the district court's conclusion that Harleystville ultimately must satisfy Hollingsworth's entire judgment.<sup>38</sup>

The Fourth Circuit in *Harleystville* properly concluded that Virginia law permitted Hollingsworth to satisfy the entire judgment from Harleystville.<sup>39</sup> Section 8.01-443 of the Virginia Code provides that a personal injury plaintiff may elect from which joint tortfeasor he will satisfy his judgment.<sup>40</sup> Stressing a plaintiff's right to election under section 8.01-443 of the Virginia

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34. See *Harleystville*, 789 F.2d at 275. The Fourth Circuit in *Harleystville* stated that an injured plaintiff should not have to endure months of delay while jointly liable insurance carriers determined which insurance carrier is ultimately liable for the plaintiff's judgment. *Id.* The Fourth Circuit determined that, accordingly, a plaintiff may collect from either insurance carrier without interference from the other. *Id.* Noting that the General Assembly intended the uninsured motorist statute to benefit injured persons and that the statute is remedial in nature, the Fourth Circuit held that Hollingsworth could collect his entire judgment from Nationwide. *Id.*

35. *Id.* at 275; see also *infra* notes 36-38 and accompanying text (discussing Nationwide's subrogation rights against Harleystville).

36. *Harleystville*, 789 F.2d at 275. The Fourth Circuit in *Harleystville* noted that Nationwide was not the insurer of the uninsured motorist. *Id.* The Fourth Circuit reasoned that because Nationwide was liable to Hollingsworth only for the injuries caused by the unknown motorist, Nationwide had no obligation to satisfy judgments that other injured motorists could obtain against the unknown motorist. *Id.* The Fourth Circuit held that, therefore, if Nationwide paid any portion of Hollingsworth's judgment, then Harleystville must reimburse Nationwide pursuant to Nationwide's statutory right of subrogation. *Id.*; see VA. CODE ANN. § 38.2-2206 (G) (Repl. Vol. 1986) (uninsured motorist statute providing right of subrogation to uninsured motorist carrier); *supra* note 7 and accompanying text (discussing subrogation of insurance carrier to insured's claim).

37. *Id.* at 275.

38. *Id.*

39. See *infra* notes 40-43 and accompanying text (declaring that Hollingsworth could satisfy entire judgment from Harleystville).

40. See VA. CODE ANN. § 8.01-443 (Repl. Vol. 1984). Section 8.01-443 of the Virginia Code provides that a judgment against one joint tortfeasor is not a bar to prosecuting the action against other joint tortfeasors. *Id.* Accordingly, under the Virginia Code an injured plaintiff may bring separate actions against each joint tortfeasor or sue them jointly until his judgment is satisfied. *Id.* Section 8.01-443 also provides that no bar to the plaintiff's action arises until full satisfaction of the plaintiff's judgment. *Id.*

Code, the Virginia Supreme Court in *Fitzgerald v. Campbell*<sup>41</sup> held that an injured plaintiff may bring separate actions against joint tortfeasors and may proceed against each joint tortfeasor until his judgment is satisfied.<sup>42</sup> In *Fitzgerald* the plaintiff obtained judgment against only six of the joint tortfeasors for assault and battery.<sup>43</sup> A sheriff, however, executed the plaintiff's judgment against one of the defendant joint tortfeasors before the plaintiff had chosen which joint tortfeasor he wanted to satisfy his judgment.<sup>44</sup> Unwilling to accept satisfaction from the joint tortfeasor against which the sheriff had executed judgment, the plaintiff sued Campbell, a joint tortfeasor who the plaintiff did not obtain a judgment against in the first action.<sup>45</sup> Reversing the lower court's dismissal of the plaintiff's action against Campbell, the Virginia Supreme Court in *Fitzgerald* noted that although the plaintiff can enforce only one satisfaction of his judgment, each joint tortfeasor remains liable to the plaintiff until the plaintiff satisfies his entire judgment.<sup>46</sup> The *Fitzgerald* court determined that a judgment is not fully satisfied under the statute unless the plaintiff voluntarily has elected from which joint tortfeasor he will satisfy his judgment.<sup>47</sup> Accordingly, the Virginia Supreme Court in *Fitzgerald* allowed the plaintiff to satisfy his judgment against Campbell.<sup>48</sup>

The Fourth Circuit in *Harleysville*, like the Virginia Supreme Court in *Fitzgerald*, determined that a plaintiff has the right to elect from which joint tortfeasor he will satisfy his judgment.<sup>49</sup> Because Hollingsworth's judgment entitles him to satisfy his judgment from the unknown motorist, LaValley's or Baker, the Fourth Circuit correctly declared that Hollingsworth could elect to satisfy his judgment from any of the three defendants.<sup>50</sup> Thus, although the Fourth Circuit did not require Hollingsworth to satisfy his judgment from LaValleys' or Baker, or from their insurer Harleysville,

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41. 131 Va. 486, 109 S.E. 308 (1921).

42. See *id.* at 490-491, 109 S.E. at 310 (considering plaintiff's right to elect joint tortfeasor against whom to proceed to satisfy plaintiff's judgment). Before the case of *Fitzgerald v. Campbell*, a judgment against one of several joint tortfeasors, whether satisfied or not, barred any action against the others. *Id.* at 490, 109 S.E. at 310.

43. *Id.* at 487, 109 S.E. at 308.

44. *Id.* The plaintiff in *Fitzgerald* had wanted to obtain a judgment against Campbell, who was a joint tortfeasor but not a defendant in the action. *Id.*

45. *Id.*

46. See *id.* at 494, 109 S.E. at 311 (plaintiff's action not barred until full satisfaction). The Virginia Supreme Court in *Fitzgerald* stated that the plaintiff had the right to satisfy his judgment against any of the joint tortfeasors. *Id.* The *Fitzgerald* court reasoned that, accordingly, the plaintiff also had the right to await the trial and the result of his action against Campbell before satisfying his judgment. *Id.* at 491.

47. *Id.* at 494, 109 S.E. at 311.

48. *Id.*

49. See *supra* notes 39-48 and accompanying text (discussing plaintiff's right of election against joint tortfeasors).

50. See *supra* note 15 and accompanying text (discussing Hollingsworth's joint judgment against Baker, LaValleys and unknown motorist).



Hollingsworth, nonetheless, could elect to satisfy the entire judgment from Harleysville.<sup>51</sup>

Although the *Harleysville* court correctly held that Hollingsworth could elect to satisfy the entire judgment against Harleysville, some authority suggests that the Fourth Circuit incorrectly held that Hollingsworth, likewise, could elect to satisfy his judgment from Nationwide.<sup>52</sup> In *Hobbs v. Buckeye Union Casualty*,<sup>53</sup> the District Court for the Western District of Virginia held that Virginia's uninsured motorist law does not create insurance for uninsured motorists.<sup>54</sup> In *Hobbs*, the plaintiff was a paying passenger in an automobile that collided with an unknown motorist.<sup>55</sup> The plaintiff initiated an action against the driver of the vehicle in which he was a passenger and against the unknown motorist.<sup>56</sup> After satisfying the plaintiff's judgment, Buckeye Union Casualty Company, the insurer of the vehicle in which the plaintiff was a passenger, removed the action to the Western District Court of Virginia and sought contribution from the plaintiff's uninsured motorist carrier.<sup>57</sup> Stating that the purpose of the statute was to protect the insured against inadequate compensation, the *Hobbs* court determined that uninsured motorist coverage would be available when other sources of compensation were not available.<sup>58</sup> The *Hobbs* court held that the plaintiff's uninsured motorist coverage was not available for contribution to Buckeye because Buckeye represented another available source of compensation to

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51. See *Harleysville*, 789 F.2d at 274 (holding that Hollingsworth's judgment against LaValleys' allowed plaintiff to seek full satisfaction directly from Harleysville).

52. See, e.g., *Pulley v. Allstate Ins. Co.*, 242 F. Supp. 330, 336 (E.D.Va. 1965)(Virginia General Assembly enacted Uninsured Motorist law to provide adequate compensation for injured insured when other sources were unavailable); *Southern v. Lumberman's Mut. Casualty Co.*, 236 F.Supp. 370, 372 (W.D.Va. 1964)(stating that Virginia law did not create insurance for uninsured motorists and holding that Virginia's uninsured motorist statute insures insured only against inadequate compensation); *Hobbs v. Buckeye Union Cas. Co.*, 212 F. Supp. 349, 351-52 (W.D.Va. 1962)(intent of Virginia General Assembly in enacting uninsured motorist statute was to provide uninsured motorist coverage only when other sources were unavailable); see also *infra* notes 53-60 and accompanying text ( *Hobbs* court permitting uninsured motorist coverage when other sources are unavailable).

53. 212 F. Supp. 349 (W.D.Va. 1964).

54. See *id.* at 351 (declaring that Uninsured Motorist Statute did not provide insurance for uninsured motorist).

55. *Id.* at 350.

56. *Id.* (plaintiff suffered extensive injuries and obtained judgment in Circuit Court of Washington County, Virginia against driver and unknown motorist).

57. *Id.* In *Hobbs*, Celina Mutual Insurance Company issued uninsured motorist coverage to the plaintiff. *Id.* The *Hobbs* court stated that Celina's automobile liability policy to the plaintiff was contingent on the lack of other sources of compensation to the plaintiff. *Id.*

58. *Id.* at 352-53. ( *Hobbs* court determining plaintiff's uninsured motorist coverage not available for contribution). In *Hobbs* the District Court for the Western District of Virginia stated that although courts enforced contribution between joint wrongdoers, the plaintiff's insurance carrier was not the insurer of the uninsured motorist. *Id.* at 351. The *Hobbs* court held that, accordingly, Buckeye has no right to seek contribution from the plaintiff's uninsured motorist coverage. *Id.* at 353.

the plaintiff.<sup>59</sup> Accordingly, the District Court for the Western District of Virginia dismissed Buckeye's claim for contribution from the plaintiff's uninsured motorist coverage.<sup>60</sup>

While *Hobbs* implies that the Fourth Circuit should not have allowed Hollingsworth a right of election against Nationwide unless other sources of compensation were unavailable, Virginia court precedent suggest that Nationwide's uninsured motorist coverage obligated Nationwide to compensate Hollingsworth, regardless of the availability of other sources of compensation.<sup>61</sup> Under section 38.2-2206(A) of the Virginia Code<sup>62</sup>, an insurance carrier must compensate an insured for any injuries caused by an uninsured motorist.<sup>63</sup> Examining Virginia's uninsured motorist law, the Virginia Supreme Court in *John Doe v. Brown*<sup>64</sup> stated that an insurance carrier must issue automobile liability insurance policies according to the Uninsured Motorist Statute.<sup>65</sup> In *Brown* the plaintiff was a passenger in a motor vehicle involved in an accident with an unknown motorist.<sup>66</sup> The plaintiff sued the driver of the automobile in which he was a passenger and, also, sued the unknown motorist.<sup>67</sup> After obtaining judgments against the driver and the unknown motorist, the plaintiff sought compensation from his uninsured motorist carrier under his policy's uninsured motorist provision.<sup>68</sup> Stating that the plaintiff failed to give the uninsured motorist carrier proper notice of the action, the carrier refused to satisfy the plaintiff's judgment and appealed the judgment to the Supreme Court of Virginia.<sup>69</sup> On appeal the Virginia Supreme Court in *Brown* noted that the insurance company received

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59. *Id.* (holding that plaintiff's uninsured motorist coverage not available when another source of compensation exists). The *Hobbs* court determined that Buckeye was the insurance carrier for the driver and also was the insurer of any passenger against injury from an unknown motorist. *Id.* at 351. The *Hobbs* court further determined that the plaintiff's uninsured motorist carrier provided additional protection to the plaintiff if no other compensation was available. *Id.* at 351-52. The *Hobbs* court held that Buckeye, therefore, was the primary insurance carrier and that the plaintiff's uninsured motorist coverage was not available for contribution. *Id.*

60. *Id.* at 353. The United States District Court for the Western District of Virginia in *Hobbs v. Buckeye Union Casualty Co.* recognized that Virginia law allows contribution from the insurer of one joint tortfeasor to the insurer of another joint tortfeasor. *Id.* The *Hobbs* court held that an uninsured motorist carrier, however, was not the insurer of an unknown motorist. *Id.* The court concluded that, therefore, a joint tortfeasor could not compel contribution from the uninsured motorist carrier. *Id.*

61. See *infra* note 62-73 and accompanying text (discussing Nationwide's contractual obligation to Hollingsworth under Hollingsworth's uninsured motorist provision).

62. VA. CODE ANN. § 38.2-2206(A) (Repl. Vol. 1986).

63. See *Id.* (provides that all motor vehicle liability insurance policies in Virginia must include coverage that protects insured from negligent uninsured motorists); see also *supra* notes 3-4 and accompanying text (statute mandating insurance protection against negligent uninsured motorists).

64. 203 Va. 508, 125 S.E.2d 159 (1962).

65. *Id.* at 513, 125 S.E.2d at 163.

66. *Id.* at 510-11, 125 S.E.2d at 163.

67. *Id.* at 511, 125 S.E.2d at 163.

68. *Id.*

69. *Id.*

an additional premium from the injured insured for accepting the additional risk of injury by an uninsured motorist.<sup>70</sup> The *Brown* court held that the insurance policy, therefore, obligated the insurance carrier to pay all sums to the injured insured that were attributable to the uninsured motorist's negligence.<sup>71</sup>

Like the *Brown* court, the Fourth Circuit in *Harleysville* emphasized the contractual obligations in the insured's policy with his uninsured motorist carrier.<sup>72</sup> Because Hollingsworth's judgment entitled him to recover from the uninsured motorist, the Fourth Circuit correctly concluded that Nationwide would remain contractually liable under Hollingsworth's policy until Hollingsworth satisfied his judgment.<sup>73</sup> By emphasizing the contractual obligations of Hollingsworth's insurance policy, the Fourth Circuit rejected the district court's interpretation of *Hobbs* as suggesting that uninsured motorist coverage is available only when other sources of compensation do not exist.<sup>74</sup> Instead, the Fourth Circuit determined that the availability of other sources of compensation did not affect Hollingsworth's right to elect from his uninsured motorist coverage to satisfy his judgment.<sup>75</sup>

In addition to Nationwide's contractual obligation to Hollingsworth under his policy's uninsured motorist provision, the underlying purpose of Virginia's uninsured motorist law supports the *Harleysville* court's holding that Nationwide is liable to Hollingsworth.<sup>76</sup> Courts that have construed Virginia's Uninsured Motorist Statute have held that the statute is remedial in nature and that the legislature intended the statute to benefit injured persons.<sup>77</sup>

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70. *Id.* at 513, 125 S.E.2d at 163.

71. *Id.* The Virginia Supreme Court in *Brown* stated that a plaintiff proceeds against the unknown motorist as "John Doe", not against the insurance company. *Id.* The *Brown* court explained that Virginia's Uninsured Motorist statute provides that John Doe is a fictitious person who stands in the place of an unknown motorist. *Id.* The defendant in *Brown* alleged, however, that the plaintiff had failed to give the defendants proper notice of his action and that, therefore, the defendant was denied due process. *Id.* at 510, 125 S.E.2d at 162. The Virginia Supreme Court in *Brown* held that the alleged constitutional grounds that would permit the insurance carrier to escape liability would allow the insurance carrier to avoid its contractual obligation to the plaintiff. *Id.* at 513, 125 S.E. at 163.; see VA. CODE ANN. § 38.2-2206 (E) (Repl. Vol. 1986) (allowing plaintiff to obtain judgment against uninsured motorist through John Doe action).

72. See *Harleysville*, 789 F.2d at 274. The Fourth Circuit in *Harleysville* stated that Nationwide had contracted with Hollingsworth to pay Hollingsworth all sums that his judgment legally entitled him to against the uninsured motorist. *Id.*

73. *Id.*

74. See *id.* at 275 (Fourth Circuit in *Harleysville* holding that uninsured motorist coverage is available despite other available sources of indemnification). *But cf. supra* note 58 and accompanying text ( *Hobbs* court determining that uninsured motorist coverage is available when other sources of compensation are inadequate).

75. *Harleysville*, 789 F.2d at 275.

76. See *infra* notes 77-83 (discussing courts that construe liberally the Virginia Uninsured Motorist Statute to benefit insured motorist).

77. See, e.g., *Wood v. State Farm Mut. Auto. Ins. Co.*, 432 F. Supp. 41, 43 (1977)(courts

The Virginia Supreme Court in *Bryant v. State Farm*,<sup>78</sup> for example, held that courts should construe the statute liberally to protect an injured insured from inadequate compensation.<sup>79</sup> In *Bryant* the plaintiff obtained a judgment against the driver and owner of an uninsured automobile.<sup>80</sup> The plaintiff had coverage under his father's liability insurance policy and also under a liability insurance policy that State Farm had issued directly to him.<sup>81</sup> Allowing the plaintiff to seek compensation under both policies, the Virginia Supreme Court in *Bryant* noted that under Virginia's Uninsured Motorist Statute an insurance carrier must compensate an injured person for any injuries attributable to an uninsured motorist.<sup>82</sup> The *Bryant* court held that the Virginia legislature intended that the statute afford broad insurance coverage to benefit persons injured by an uninsured motorist.<sup>83</sup>

To determine the scope of Hollingsworth's uninsured motorist coverage in *Harleysville*, the Fourth Circuit followed the approach that the Virginia Supreme Court in *Bryant v. State Farm* exemplifies.<sup>84</sup> By stressing that the Virginia General Assembly enacted Virginia's Uninsured Motorist Statute for the benefit of insureds injured by negligent uninsured motorists, the *Harleysville* court intended to secure for the plaintiff a right of election against his uninsured motorist carrier despite the availability of other sources of compensation.<sup>85</sup> By emphasizing this right of election, the Fourth Circuit has overcome any implication from the *Hobbs* decision that a right of election exists only when other sources of compensation do not exist.<sup>86</sup>

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should construe liberally Virginia's uninsured motorist statute.); *Tudor v. Allstate Ins. Co.*, 216 Va. 918, 921, 224 S.E.2d 156, 158 (1976)(courts consistently have held that uninsured motorist statute is remedial in nature and that courts should construe liberally statute for protection of qualified claimants); *Bryant v. State Farm Mut. Auto. Ins. Co.*, 205 Va. 897, 900, 140 S.E.2d 817, 820 (1965)(uninsured motorist statute enacted for benefit of injured persons and courts should construe liberally the statute for that purpose); *McDaniel v. State Farm Mut. Ins. Co.*, 205 Va. 815, 820, 139 S.E.2d 806, 809 (1965)(same).

78. 205 Va. 897, 140 S.E.2d 817 (1965).

79. *Id.* at 900, 140 S.E.2d at 820.

80. *Id.* at 898, 140 S.E. at 818.

81. *Id.*

82. *Id.* at 899, 140 S.E.2d at 818. The Virginia Supreme Court in *Bryant* noted that section 38.2-2206 (A) (formerly § 38.1-381) of the Virginia Code required uninsured motorist protection in every liability insurance policy issued in Virginia. *Id.*; see *supra* note 3 and accompanying text (discussing section 38.2-2206 (a) of Virginia's Uninsured Motorist Statute).

83. *Bryant*, 205 Va. 897, 900, 140 S.E.2d at 820. The *Bryant* court stated that State Farm's provision that limited the plaintiff's uninsured motorist coverage was contrary to Virginia's uninsured motorist law. *Id.* Noting that the Virginia General Assembly intended the statute to afford broad coverage, the *Bryant* court held that the State Farm provision was invalid. *Id.* at 902, 140 S.E.2d at 820.

84. Compare *id.* (construing Virginia's Uninsured Motorist Statute to afford broad coverage to insureds); with *supra* notes 33-34 and accompanying text (Fourth Circuit in *Harleysville* holding that Virginia General Assembly intended statute to benefit injured persons and that statute is remedial in nature).

85. See *supra* notes 74-75 and accompanying text (Fourth Circuit rejecting *Hobbs* court's holding that plaintiff has right of election when other sources of compensation do not exist); *supra* notes 59 & 60 (*Hobbs* court determining that right of contribution is available when other sources are inadequate).

86. *Id.*

After determining that Nationwide remained liable to Hollingsworth, the Fourth Circuit correctly held that after Nationwide paid any portion of Hollingsworth's judgment under his uninsured motorist coverage, the statute subrogated Nationwide to Hollingsworth's claims against any joint tortfeasor and their respective insurance carriers.<sup>87</sup> The Virginia Supreme Court in *United Services Auto Association (U.S.A.A.) v. Nationwide Mutual Insurance Co.*<sup>88</sup> examined section 38.2-2206 (G) of Virginia's Uninsured Motorist statute and held that section 38.2-2206(G) subrogated the insurance carrier to the rights of the insured against any negligent party.<sup>89</sup> In *U.S.A.A.* the plaintiff suffered injuries in an automobile accident.<sup>90</sup> The plaintiff initiated an action for damages against the defendant and received judgment.<sup>91</sup> The defendant's insurer, however, refused to compensate the plaintiff because the insurer claimed that it had cancelled the defendant's policy.<sup>92</sup> United Services compensated the plaintiff under her uninsured motorist coverage.<sup>93</sup> Claiming that Nationwide, the defendant's liability insurance carrier, had cancelled the defendant's policy wrongfully, United Services sued Nationwide for reimbursement pursuant to its right of subrogation.<sup>94</sup> Affirming the trial court, the Virginia Supreme Court in *U.S.A.A.* stated that the statute expressly grants subrogation rights to an uninsured motorist carrier who has satisfied an insured's claim and determined that United Services, therefore, was the beneficiary of its insured's rights against the defendant's insurance carrier.<sup>95</sup> Accordingly, the *United* court allowed United Services to seek contribution from Nationwide.<sup>96</sup>

The Fourth Circuit in *Harleysville*, like the Virginia Supreme Court in *U.S.A.A.*, correctly applied section 38.2-2206 (G) of the Virginia Uninsured

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87. *Harleysville*, 789 F.2d at 275.; see VA. CODE ANN. § 38.2-2206(G) (Repl. Vol. 1986)(provision subrogating insurance carrier to rights of insured); *supra* note 7 (discussing cases and statute that subrogates victim's insurer to all of victim's rights against uninsured motorist).

88. 218 Va. 861, 241 S.E.2d 784 (1978).

89. See *id.* at 864, 241 S.E.2d at 788 (discussing right of subrogation after insurance carrier pays judgment). The Virginia Supreme Court in *United Services' Auto Association (U.S.A.A.) v. Nationwide Mut. Ins. Co.* noted that section 38.2-2206(G) is the only provision of Virginia's Uninsured Motorist Statute that allows subrogation to the claimant's uninsured motorist carrier. *Id.*

90. *Id.* at 862, 241 S.E.2d 785.

91. *Id.*

92. *Id.* at 863, 241 S.E.2d 786.

93. See *id.* at 862, 241 S.E.2d at 785. In the *U.S.A.A.* case, United Services Automobile Insurance Association had issued the plaintiff a liability insurance policy. *Id.* Nationwide Mutual Insurance Company insured the negligent driver of the other automobile involved in the accident. *Id.* Nationwide denied coverage because it had cancelled the defendant's policy before the accident. *Id.*

94. See *id.* at 863, 241 S.E.2d at 785 (United Services alleging that Nationwide wrongfully denied insurance coverage to defendant).

95. *Id.* at 864, 241 S.E.2d at 788. In *United* the Virginia Supreme Court noted that United Services as beneficiary could have no greater rights than the rights of its insured.

96. *Id.*

Motorist Statute which provides subrogation rights to an uninsured motorist carrier who has satisfied its insured's claim.<sup>97</sup> Like the insurance carrier in *U.S.A.A.*, Nationwide, after paying any part of Hollingsworth's judgment, is the beneficiary of its insured's rights against the defendant's liability insurance carrier.<sup>98</sup> The Fourth Circuit correctly concluded that because Virginia's Uninsured Motorist Statute subrogates Nationwide to Hollingsworth's claim against Harleysville, Hollingsworth ultimately would collect the entire judgment from Harleysville.<sup>99</sup>

In *Harleysville Mutual Insurance Co. v. Nationwide Mutual Insurance Co.*, the Fourth Circuit held that a plaintiff, injured in an automobile accident by an insured and uninsured motorist, could elect to satisfy his entire judgment against either joint tortfeasor.<sup>100</sup> The Fourth Circuit also held that when an uninsured motorist is a joint tortfeasor, a plaintiff's right of election extends to his uninsured motorist carrier pursuant to his policy's uninsured motorist coverage.<sup>101</sup> Finally, the Fourth Circuit held that if the uninsured motorist carrier pays the plaintiff any portion of the plaintiff's judgment, Virginia's Uninsured Motorist Statute subrogates the carrier to the plaintiff's rights against the other joint tortfeasors.<sup>102</sup> In *Harleysville* the Fourth Circuit focused on the immediate needs of an injured insured rather than which insurance company ultimately would pay benefits to the plaintiff.<sup>103</sup> Liberally construing Virginia's Uninsured Motorist Statute and relying on the contractual relationship between the insurance carrier and the insured, the Fourth Circuit rejected the implication in favor of awarding uninsured motorist benefits only if other sources of compensation are unavailable.<sup>104</sup> Courts construing Virginia's Uninsured Motorist Statute should recognize that allowing an insured to elect against his uninsured motorist coverage when other sources of compensation are available furthers the Virginia

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97. See *Harleysville*, 789 F.2d at 275 (holding that Nationwide has right of subrogation against Harleysville); see also *supra* notes 7 and accompanying text (discussing section 38.2-2206 (G) of Virginia Code which provides right of subrogation to uninsured motorist).

98. See *supra* notes 36-38 and accompanying text (Fourth Circuit in *Harleysville* declaring that Virginia Uninsured Motorist Statute subrogated Nationwide to Hollingsworth's claim against Harleysville).

99. *Id.*

100. See *supra* notes 26-28 and accompanying text (Fourth Circuit in *Harleysville* found that Hollingsworth has right to elect against Harleysville to satisfy entire judgment).

101. See *supra* notes 30-33 and accompanying text (Fourth Circuit determined that Hollingsworth's uninsured motorist provision contractually obligated Nationwide to Hollingsworth).

102. See *supra* notes 36-37 and accompanying text (Fourth Circuit declared that Nationwide's statutory rights of subrogation enabled it to pursue any source of contribution that was available to Hollingsworth).

103. See *supra* note 34 and accompanying text (Fourth Circuit stressed that courts should allow expeditious collection of plaintiff's judgment from any liable source).

104. See *supra* notes 31-33 and accompanying text (Fourth Circuit stressing contractual relationship between Hollingsworth and his uninsured motorist carrier); *supra* notes 34, 76 & 77 and accompanying text (General Assembly intended broad coverage to an injured insured).