

IN THE

Supreme Court of Virginia

RECORD NO. 001349

ALLSTATE INSURANCE COMPANY,

Appellant,

v.

MARCELLUS D. JONES,

Appellee.

JOINT APPENDIX

Richard W. Schaffer
SCHAFFER & CABELL, P.C.
100 West Franklin Street, Suite 200
Post Office Box 507
Richmond, Virginia 23218-0507
(804) 648-0064

Counsel for Appellant

P. Christopher Guedri
ALLEN, ALLEN, ALLEN & ALLEN
1809 Staples Mill Road
Richmond, Virginia 23230
(804) 257-7550

Counsel for Appellee

Table of Contents

Page Number

Motion for Judgment, filed 7/29/98	1
Grounds of Defense, filed 8/21/98	5
Motion for Summary Judgment, filed 11/19/99	6
Memorandum in Support, filed 12/10/99	10
Letter Opinion, dated 1/10/00	20
Order, entered 3/10/00	22
Assignment of Error	24

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

JOHN MARSHALL COURTS BUILDING

CASE NO. 28-1840.1

MARCELLUS D. JONES

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY

Serve: Edward R. Parker, Registered Agent
5511 Staples Mill Road
Richmond, VA (Henrico County)

Defendant.

MOTION FOR JUDGMENT

Comes now the plaintiff, Marcellus D. Jones, by counsel, and moves the Court for judgment against the defendant by reason of the following:

1. On or about May 14, 1996, the plaintiff was a passenger in a Toyota automobile owned and operated by Christopher Dean Robinson in an easterly direction on Hickory Road near Southlawn in Chesterfield County, Virginia.

2. At that time and place, the Toyota automobile crossed the center line of the roadway into the westbound travel lane, crossed back over the center line into the eastbound travel lane, left the lanes of travel of the roadway, struck an embankment, and overturned.

3. The above described collision was directly and proximately caused by the carelessness, recklessness, and

95838_1

Filed in the Clerk's Office this 29th day of July, 1998
Writ Tax \$ 15 A.M./P.M.
Fee 7.00
L. A. S. 2 Tests: BEVILL M. DEAN, CLERK
C. H. M. P. 2
Lib. Fee 2
Sheriff's Fee 36
Total Paid 100 Kath. Holden D.C.

negligence in the operation of the Toyota automobile by Christopher Dean Robinson.

4. As of the date of the above described collision, the vehicle in which the plaintiff was a passenger was insured by a policy of insurance issued by Allstate Insurance Company (herein "Allstate") to Christopher Dean Robinson providing liability, uninsured, and underinsured motorists coverage.

5. At the time of the above described collision, the plaintiff was a guest in the vehicle operated by Christopher Dean Robinson and was riding in said vehicle with the permission of Christopher Dean Robinson.

6. On or about June 6, 1997, the plaintiff filed a negligence action in the Circuit Court of the City of Richmond (Case No: LC-1409-4) against Christopher Dean Robinson seeking money damages for the injuries sustained by the plaintiff in the above described collision.

7. On or about March 30, 1998, and during the pendency of said action, Allstate forwarded correspondence to Christopher Dean Robinson and counsel for the plaintiff in which Allstate denied liability coverage to Christopher Dean Robinson based upon an asserted lack of cooperation.

8. Given Allstate's denial of coverage to Christopher Dean Robinson, Christopher Dean Robinson became an "uninsured motorist" pursuant to and for purposes of Va. Code §38.2-2206 and any insurance policy on which the plaintiff was an insured.

9. Pursuant to Va. Code §38.2-2206, Allstate was served with process in the above referenced case on or about March 23, 1998.

10. On or about May 8, 1998, the plaintiff obtained a judgment against Christopher Dean Robinson in the amount of \$55,000.00 with costs and interest from the date of judgment.

11. As a guest passenger in and permissive user of the vehicle insured by Allstate, the plaintiff is an "insured" under the Allstate policy pursuant to Va. Code §38.2-2206 and the uninsured motorists endorsement to the policy.

12. As an insured under the Allstate policy, the plaintiff, having obtained a judgment against Christopher Dean Robinson, an uninsured motorist as defined by statute, is entitled to recover under the uninsured motorist endorsement to the Allstate policy.

13. The plaintiff, by counsel, has made claim against Allstate for payment of the judgment (to the extent of its coverage) and Allstate has refused to pay the claim.

14. That Allstate has breached its insurance contract with an insured.

15. As a result of said breach of contract, the plaintiff has been denied the insurance benefits and coverage that he is, by law, entitled to.

16. That Allstate's denial of the plaintiff's claim and its refusal to pay such was not made in good faith.

WHEREFORE, the plaintiff, Marcellus D. Jones, by counsel, prays for judgment against Allstate in the amount of its underinsured motorists coverage or in the amount of FIFTY-FIVE THOUSAND AND 00/100 dollars (\$55,000.00), whichever is less, plus interest, costs, expenses and attorneys fees as provided in Va. Code §8.01-66.1(D).

MARCELLUS D. JONES

BY: 

P. CHRISTOPHER GUEDRI
Allen, Allen, Allen & Allen
1809 Staples Mill Road
Richmond, VA 23230
(804) 359-9151

Attorneys for Plaintiff

VIRGINIA:

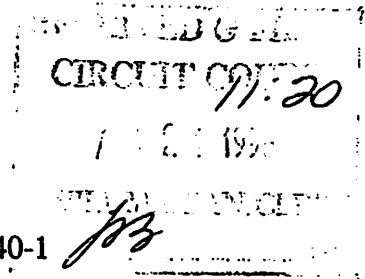
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
(John Marshall Courts Building)

MARCELLUS D. JONES,

Plaintiff,

v.

Case No.: LE-1840-1



ALLSTATE INSURANCE COMPANY,

Defendant.

GROUND OF DEFENSE

COMES NOW the Allstate Insurance Company, by counsel, and for its Grounds of Defense to the Motion for Judgment filed against it says as follows:

1. This defendant admits the allegations contained in Paragraph 1 of the Motion for Judgment.
2. This defendant is without knowledge to admit or deny the allegations contained in Paragraph 2 of the Motion for Judgment and calls for strict proof thereof.
3. This defendant denies the allegations contained in Paragraph 3 of the Motion for Judgment and calls for strict proof thereof.
4. In its response to Paragraph 4, this defendant admits that the said vehicle was insured by Allstate Insurance Company prior to the time of the accident and provided the required liability coverage as mandated in Virginia.
5. This defendant admits the allegations contained in Paragraph 5.
6. This defendant admits the allegations contained in Paragraphs 6 and 7.
7. In its response to Paragraph 8, this defendant states that Paragraph 8 is a statement of law to which no response is required. It does admit that it did deny coverage to Christopher Dean Robinson, the operator of the vehicle.

8. This defendant admits the allegations contained in Paragraphs 9 and 10 of the Motion for Judgment.

9. This defendant denies the allegations contained in Paragraphs 11 and 12 of the Motion for Judgment and calls for strict proof thereof.

10. This defendant admits the allegations contained in Paragraph 13.

11. This defendant denies the allegations contained in Paragraphs 14, 15 and 16 of the Motion for Judgment and calls for strict proof thereof.

12. This defendant denies that it is indebted to the plaintiff in any sum whatsoever.

WHEREFORE this defendant moves that this action be dismissed and the defendant recover its costs herein expended.

ALLSTATE INSURANCE COMPANY

By Counsel



Richard W. Schaffer, Esquire
SCHAFER & CABELL, P.C.
P.O. Box 507
Richmond, Virginia 23218
(804) 648-0064

Counsel for Defendant

Certificate of Service

I hereby certify that a true copy of the foregoing Grounds of Defense was mailed, via U.S. mail, postage prepaid, to counsel for the plaintiff, P. Christopher Guedri, Esquire, Allen, Allen, Allen & Allen, 1809 Staples Mill Road, Richmond, Virginia 23230, this 21st day of August, 1998.


Richard W. Schaffer, Esquire

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building
Case No.: LE-1840-1**

MARCELLUS D. JONES,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

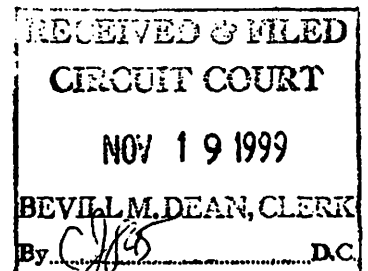
MOTION FOR SUMMARY JUDGMENT

Upon plaintiff's Motion for Judgment, defendant's Grounds of Defense, and facts to be stipulated by counsel, the plaintiff hereby moves for summary judgment.

MARCELLUS D. JONES

By: 
Of Counsel

P. Christopher Guedri
ALLEN, ALLEN, ALLEN & ALLEN
1809 Staples Mill Road
P.O. Box 6855
Richmond, VA 23230
Telephone: (804) 257-7550



CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion for Summary Judgment has been mailed, postage prepaid, this 18th day of November, 1999 to:

Richard W. Schaffer, Esquire
SCHAFFER & CABELL, P.C.
P.O. Box 507
Richmond, VA 23218



VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building
Case No.: LE-1840-1**

MARCELLUS D. JONES,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 10th day of December, 1999 at 10:00 a.m., or as soon thereafter as counsel can be heard, the undersigned will move this Court to rule upon Plaintiff's Motion for Summary Judgment.

MARCELLUS JONES

By: 

Of Counsel

P. Christopher Guedri
Allen, Allen, Allen & Allen
P.O. Box 6855
1809 Staples Mill Road
Richmond, Virginia
804-257-7550

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Hearing was mailed to Richard W. Schaffer, Esquire, P.O. Box 507, Richmond, VA 23218-1105 this 18th day of November, 1999.



P. Christopher Guedri

VIRGINIA

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING CASE NO.
Case No.: LE-1840-1**

MARCELLUS D. JONES,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the plaintiff, Marcellus Jones, by counsel, and for his Memorandum in Support of Plaintiff's Motion for Summary Judgment, states the following:

STATEMENT OF THE CASE AND FACTS

On May 14, 1996, Marcellus Jones was a passenger in a Toyota automobile owned and operated by Christopher Dean Robinson in an easterly direction on Hickory Road in Chesterfield County. As the evidence at trial established, Mr. Robinson was traveling far in excess of the posted speed limit, attempted to pass a VDOT vehicle contrary to a double yellow line, entered the oncoming lane of traffic, almost collided head-on with a school bus full of children, jerked his vehicle back to the right, left the roadway, struck an embankment, and overturned. As a result of the collision, Marcellus Jones was seriously injured.

At the time of the accident, the Robinson Camry was insured under a policy of insurance issued by Allstate Insurance Company. The policy included an uninsured

motorist endorsement. A copy of Allstate's UM endorsement is attached as Exhibit 7.

On June 6, 1997, Marcellus Jones, by counsel, filed a negligence action in the Circuit Court of the City of Richmond (Case No: LC-1409-4) against the defendant, Christopher Dean Robinson, seeking money damages for the injuries sustained by the plaintiff. On March 30, 1998, and during the pendency of said action, Allstate forwarded correspondence to Mr. Robinson and to counsel for the plaintiff in which Allstate denied liability coverage to the defendant based upon an asserted lack of cooperation. A copy of Allstate's written denial of coverage is attached as Exhibit 1. Given Allstate's denial of coverage, Mr. Robinson became an "uninsured motorist" as defined by Allstate's policy and the Code of Virginia. Accordingly, the plaintiff, by counsel served Allstate's registered agent with process as required by Va. Code §38.2-2206.

On May 8, 1998, the plaintiff's negligence action was tried as scheduled before the Honorable Melvin R. Hughes, Jr. The jury returned a verdict in favor of the plaintiff in the amount of \$55,000.00 and a Judgment Order was entered in accordance with the jury's verdict. A copy of the Judgment Order is attached hereto as Exhibit 2.

In this suit, the plaintiff seeks to recover under the uninsured motorist endorsement to the Robinson policy with Allstate. As there are no material facts in dispute, the case is ripe for summary judgment.

ISSUE PRESENTED

Under the facts and circumstances presented, is Marcellus Jones entitled to recover under the uninsured motorist endorsement to the policy issued by Allstate to Christopher Dean Robinson?

ANSWER

Jones is an "insured" under the uninsured motorist endorsement to the Allstate policy and is further defined as an "insured" under the policy by Va. Code § 38.2-2206. An uninsured motorist is defined both in the policy and the Code to include motorists whose liability coverage has been denied for lack of cooperation or otherwise. Accordingly, the plaintiff, an insured under the policy, has secured a judgment against an "uninsured motorist" as defined and is thus entitled to recover under the uninsured motorist endorsement to the Allstate policy notwithstanding Robinson's asserted lack of cooperation.¹

DISCUSSION

Although the specific issue presented has not, to counsel's knowledge, been addressed by our Supreme Court, a straightforward application of the facts to the wording of both the controlling statute and Allstate's policy, renders a clear and unmistakable outcome: Marcellus Jones is entitled to recover under the uninsured motorist endorsement of the Allstate policy issued to Christopher Dean Robinson.

The insurer's liability under the uninsured motorist statute is contractual in nature, and arises under the uninsured motorist law after the liability of any uninsured motorist

¹Although not an issue here, any failure to cooperate by Robinson did not prejudice Allstate's position. A failure to cooperate does not invalidate an insured's coverage unless prejudice is established. (i.e., a different result would have likely resulted had the insured cooperated). State Farm Mut. Auto Ins. Co., v. Davies, 226 Va. 310, 310 S.E.2d 167 (1983) Robinson's negligence, as established by the evidence, was so clear that your Honor struck the defense and submitted only the issue of damages to the jury. The jury was further instructed that they should not allow the defendant's absence at trial to affect their verdict in any way.

has been established in a court of competent jurisdiction. General Acc. Fire & Life Assur. Corp. v. Aetna Cas. & Sur. Co., 208 Va. 467, 158 S.E.2d 750 (1968). Two requirements must be met before a person can receive the benefits of uninsured motorist coverage in Virginia: First, such a person must qualify as an "insured" under the endorsement to the policy upon which claim is being made; and secondly, he or she must establish the legal liability of the owner or operator of an "uninsured motor vehicle". Nationwide Mut. Ins. Co. v. Harleysville Mut. Cas. Co., 203 Va. 600, 125 S.E.2d 840 (1962). Marcellus Jones meets both requirements.

Who is an insured for purposes of uninsured motorist coverage is addressed by statute and Allstate's policy.

The Code definition of "insured" is as follows:

"Insured" as used in subsection A, D, G, and H of this section means the named insured and, while resident of the same household, the spouse of the named insured, and relatives, wards or foster children of either, while in a motor vehicle or otherwise, and any person who uses the motor vehicle to which the policy applies, with the expressed or implied consent of the named insured, and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above. Va. Code §38.2-2206(B) (emphasis added).

In the uninsured motorist endorsement to the Allstate policy, an "insured" includes "any other person while occupying an insured motor vehicle." (Allstate Policy, p. 18)(emphasis added). The term "insured motor vehicle" is defined in the uninsured motorist endorsement of the policy as:

A motor vehicle registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies but shall not include a vehicle while being used without the permission of the owner. (Allstate Policy, p. 19-20).

There is no conflict or inconsistency between the statute and the uninsured motorist indorsement of Allstate's policy as to who is an "insured." It is clear that because "insured" is defined in the policy in terms of occupying (present tense) the vehicle, the status of the person being insured is appropriately defined at the time of the accident, or as of the time of the accident. The common sense result is that a guest passenger like Jones is an insured under the policy if, while they are occupying the vehicle, the policy applies. There is no reason why the words in the policy should not be given their natural and commonly understood meaning in the context in which they are used. In fact, the law requires such. It is undisputed that, at the time of the accident, Marcellus Jones was occupying the Toyota owned and operated by Robinson, and that the policy applied at that time. Therefore, because Jones was clearly and undeniably a "guest" in the motor vehicle to which the policy applied at the time of the accident, he continues to qualify as an "insured" under the endorsement of the policy upon which claim is being made.

As stated, the language of the uninsured motorist endorsement in Robinson's policy is not in conflict with Virginia's uninsured motorist law. Therefore, if it is unambiguous, it is unnecessary to look beyond the language of the policy itself. Rather, as in the case of any other contract, the words used are given their ordinary meaning. Insurance Company v. Dollins, 201 Va. 73, 77, 109 S.E.2d 405, 409 (1959). Furthermore, any ambiguity in the policy must be construed in favor of the insured and in favor of coverage. CUNA Mutual Ins. Soc. v. Norman, 237 Va. 33, 36, 375 S.E.2d 724, 725; Caldwell v. Transportation Insurance Co., 234 Va. 639, 642, 364 S.E.2d 1, 2-3

(1988); St. Paul Ins. v. Nusbaum & Co., 227 Va. 407, 411, 316 S.E.2d 734, 736 (1984).

The Supreme Court of Virginia has held that:

Insurance policies are to be construed according to their terms and provisions and are to be considered as a whole. Where there is doubt or uncertainty and where the language of a policy is susceptible of two constructions, it is to be construed liberally in favor of the insured and strictly against the insurer. Where two interpretations equally fair may be made, the one which permits a greater indemnity will prevail because indemnity is the ultimate object of insurance. White Tire Dist. v. Pennsylvania Nat. Mutual, 235 Va. 439, 441, 367 S.E.2d 518, 519 (1988) (quoting Surety Corporation v. Elder, 204 Va. 192, 197, 129 S.E.2d 541, 655 (1963)).

Allstate's uninsured motorist policy provides in part that "uninsured motor vehicle" means:

A motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act ... such a bond or insurance policy applicable at the time of the accident but the company writing, the same is or becomes insolvent or denies coverage thereunder ... (Allstate Policy, p. 20).

This language tracks the Code, which states that an uninsured motor vehicle includes a motor vehicle for which "there is such insurance but the insurer writing the insurance denies coverage for any reason whatsoever, including failure or refusal of the insured to cooperate with the insurer." Va. Code § 38.2-2204(B). The Virginia Supreme Court has thus held that denial of coverage by the insurer makes the tortfeasor an operator of an uninsured motor vehicle within the meaning of Virginia's family auto policy. United Servs. Auto. Ass'n. v. Nationwide Mut. Ins. Co., 218 Va. 861, 241 S.E.2d 784 (1978); Aetna Casualty & Surety Co. v. Kellam, 207 Va. 736, 152 S.E.2d 287 (1967). In addition, it has been held that it would place an impossible burden on the plaintiff to require him to determine in advance of bringing suit that the insurance

company would deny coverage. Because the right of such company to deny coverage for failure to cooperate often would not arise until after the suit had been brought, the defendant in a tort action is an uninsured motorist where the insurance company denies coverage subsequent to the accident for failure to cooperate. McDaniel v. State Farm Mut. Auto. Ins. Co., 205 Va. 815, 139 S.E.2d 806 (1965).

In the present case, Allstate has admitted that Jones was involved in an accident with Robinson. In addition, Allstate denied coverage to the named insured. Therefore, the Toyota is an "uninsured motor vehicle" as defined by both the uninsured motorist endorsement of the policy and Va. Code § 38.2-2206(B). The negligence of Robinson, the owner and operator of an uninsured motor vehicle, has been established by a court of competent jurisdiction and the Judgment Order entered against him long ago become final.

Both the statute and the policy obligates the UM carrier to pay its insured all sums that the insured shall be legally entitled to recover from the owner or operator of an uninsured motor vehicle. Mr. Jones' status as an insured and Mr. Robinson's status as the operator of an uninsured motor vehicle is not in dispute. Robinson's "legal liability" having previously been established by a trial on the merits completes the analysis and establishes plaintiff's right to recover herein.

This result is further supported by the purpose and the legislative history of Virginia's uninsured motorist law. As our Supreme Court has consistently reminded us, Virginia's uninsured motorist law was enacted for the benefit of injured persons, is remedial in nature, and should be liberally construed in favor of insurance protection for

qualified claimants so that the purpose intended may be accomplished. State Farm Mut. Auto. Ins. Co. v. Brower, 204 Va. 887, 134 S.E.2d 277 (1964); McDaniel v. State Farm Mut. Auto. Ins. Co., 205 Va. 815, 139 S.E.2d 806 (1965); Bryant v. State Farm Mut. Auto. Ins. Co., 205 Va. 897, 140 S.E.2d 817 (1965); White v. Nationwide Mut. Ins. Co., 245 F. Supp. (W.D. Va. 1965); Davis v. National Grange Ins. Co., 281 F. Supp. 998 (E.D.Va. 1968); Grossman v. Glens Falls Ins. Co., 211 Va. 195, 176 S.E.2d 318 (1970); Tudor v. Allstate Ins. Co., 216 Va. 918, 224 S.E.2d 156 (1976). In enacting the uninsured motorist statute, the legislature intended to create two classes of insured persons. The first class includes the named insured and, while a resident of the same household, the spouse of any such named insured and relatives of either. The first class is protected by broad coverage, and is protected "while in a motor vehicle or otherwise." Insurance Co. of North American v. Perry, 204 Va. 833, 134 S.E.2d 418 (1964). The second class of insured persons contemplated by the statute includes those who are guests in a vehicle to which the policy applies. Allstate Ins. Co. v. Meeks, 207 Va. 897, 153 S.E.2d 222 (1967). Marcellus Jones is clearly a member of the second class. Furthermore, there is no evidence that the legislature, in enacting the uninsured motorist statute, intended the rights of passengers traveling in insured vehicles to be adversely effected by the conduct of the named insured subsequent to the accident. Indeed, it would be inconsistent with the purpose the uninsured motorist provisions of the policy purports to serve if the phrase "to which the policy applies" is narrowly construed so as to deny its protection if at the instant the accident happens there is a policy 'applicable', although the coverage of the tortfeasor's policy is later disclaimed.

CONCLUSION

Marcellus D. Jones meets the two requirements which must be met before a person can receive the benefits of uninsured motorist coverage in Virginia: First, he qualifies as an "insured" under both the statute and the endorsement to the policy upon which claim is being made; and secondly, he has established the legal liability of the owner and operator of what both the policy and statute define to be an "uninsured motor vehicle". Accordingly, Marcellus D. Jones requests that plaintiff's Motion for Summary Judgment be granted along with interest and attorney's fees as prayed for in the Motion for Judgment.

MARCELLUS D. JONES

By: 

Of Counsel

P. Christopher Guedri, VSB # 18613
ALLEN, ALLEN, ALLEN & ALLEN
1809 Staples Mill Road
Post Office Box 6855
Richmond, Virginia 23230
Telephone: (804) 257-7550

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Plaintiff's Motion in Support of Plaintiff's Motion for Summary Judgment has been hand-delivered this 10th day of December, 1999 to:

Richard W. Schaffer, Esquire
SCHAFFER & CABELL, P.C.
P.O. Box 507
Richmond, VA 23218



Circuit Court
OF THE
City of Richmond

MELVIN R. HUGHES, JR.
JUDGE

January 10, 2000

JOHN MARSHALL COURTS BUILDING
400 NORTH 9TH STREET
RICHMOND, VIRGINIA 23219

P. Christopher Guedri, Esq.
Allen, Allen, Allen & Allen
P. O. Box 6855
Richmond, VA 23230

Richard W. Schaffer, Esq.
Schaffer & Cabell
P. O. Box 507
Richmond, VA 23218

Re: Case No. LE-1840-1
Marcellus D. Jones
v.
Allstate Insurance Company

Dear Counsel:

As you will remember the plaintiff has filed a motion for summary judgment in this case and same has been briefed and argued. The defendant is an insurance company which provided insurance coverage to a vehicle in which the plaintiff was occupying as a guest at the time of an accident which occurred on May 14, 1996. The issue in the case is whether the vehicle is uninsured due to events occurring after the accident.

On the date mentioned plaintiff was riding in the vehicle which was then operated by Christopher Dean Robinson. The vehicle crossed the center line, crossed back, hit an embankment, and overturned. Plaintiff was injured and brought a claim against Robinson. The trial occurred in May, 1998 and resulted in a verdict in plaintiff's favor for \$55,000. While the case was pending the defendant denied liability coverage to Christopher Dean Robinson based upon lack of cooperation. Following judgment on the verdict plaintiff demanded of the defendant that it pay the judgment but the defendant refused.

Essentially, the defendant argues that viewing § 38.2-2206, the statute covering uninsured motorists, and the provisions in the policy it is evident that the General Assembly did not intend that a vehicle could be uninsured as to itself. In other words what is intended, the defendant maintains, is that there be another vehicle causing injury which is involved and uninsured before the required uninsured provision in an insurance policy is implicated. As noted, at the time plaintiff was injured the vehicle in which he

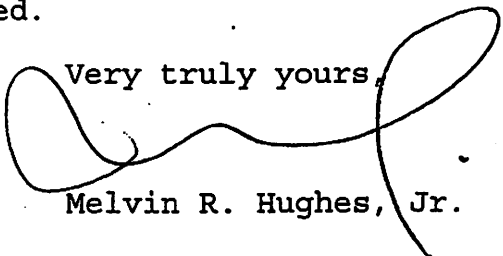
P. Christopher Guedri, Esq.
Richard W. Schaffer, Esq.
Page 2
January 10, 2000

was riding was insured. It is only after that Robinson did not cooperate and the defendant then refused to provide coverage.

Counsel has represented that no Virginia Supreme Court case has addressed the question. Uninsured motorist coverage is mandated by § 38.2-2206. A reading of the statute makes clear that the General Assembly intended to provide for insurance protection to two classes of persons in automobile cases. The first class includes the named insured and others residing in the household including a spouse and relatives. The second class includes those who are guests in a vehicle to which the policy applies. See *Allstate Ins. Co. v. Mieks*, 207 Va. 897 (1977). Here, however, the defendant relies on language in the policy which sets up the meaning of an "uninsured motor vehicle" as one not having legally mandated liability coverage applicable at the time of the accident. There is nothing in § 38.2-2204 that leads the court to conclude that the statute's protection is not extended to a situation where there was coverage in place at the instant the accident happens but later disclaimed by subsequent events involving the tortfeasor's failure to cooperate. This, along with the legion of cases that hold that the uninsured motorist law is enacted to benefit injured persons who do not have coverage and should be liberally construed compel the result: that plaintiff's motion for summary judgment should be granted. See *Tudor v. Allstate Ins. Co.*, 216 Va. 918, 921 (1996). *Grossman v. Glenn Falls Ins. Co.*, 211 Va. 195, 197 (1970).

Mr. Guedri can prepare an order and submit it for entry with defendant's exceptions noted.

Very truly yours,



Melvin R. Hughes, Jr.

jsn

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Division

MARCELLUS D. JONES,

Plaintiff,

v.

Case No.: LE-1840-1

ALLSTATE INSURANCE COMPANY,

Defendant.

ORDER

On December 10, 1999, came the parties, by counsel, upon their Cross Motions for Summary Judgment and was argued by counsel. The parties, by counsel, agreed that there were no material facts in dispute and that the issues presented were questions of law for the Court. The matter was thus submitted to the Court for determination upon the allegations contained in the Motion for Judgment, the defendant's Grounds of Defense, facts stipulated at the hearing, stipulated correspondence, and the stipulated insurance policy in effect at the time of the underlying accident.

Upon consideration thereof, the argument of counsel, the briefs and authorities submitted at the hearing, the Court finds and determines that the plaintiff was an insured as defined in Va. Code § 38.2-2206, and the underinsured motorist endorsement to the Allstate policy, that said policy was in effect as of May 14, 1996, was applicable to the motor vehicle owned and operated by Christopher Robinson, that the plaintiff has secured a final judgment against the defendant, an uninsured motorist as defined in both the insurance policy and controlling statute given Allstate's denial of coverage for the defendant's asserted lack of cooperation, and that the plaintiff is thus entitled to recover from Allstate the amount of said judgment up to the amount of the uninsured motorist coverage afforded by said policy (\$25,000.00), for post-judgment interest from May 14,

1998, and for his costs herein expended all as set forth in the Court's letter Opinion to counsel-
dated January 10, 2000.

Accordingly, it is hereby ORDERED that plaintiff's Motion for Summary Judgment is
GRANTED. It is further ORDERED that the defendant's Motion for Summary Judgment is
DENIED. Judgment is hereby ORDERED in favor of the plaintiff against the defendant in the
sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus post-judgment interest and
for his taxable costs herein expended. The defendant's objections and exceptions are duly noted.

ENTER: 3 / 10 / 00



Honorable Melvin R. Hughes, Jr., Judge

I ask for this:



P. Christopher Guedri
ALLEN, ALLEN, ALLEN & ALLEN
P.O. Box 6855
Richmond, VA 23230
Counsel for Marcellus D. Jones

Seen and objected to:



Richard W. Schaffer
SCHAFER & CABELL, P.C.
P.O. Box 507
Richmond, VA 23218
Counsel for Allstate Insurance Company

ASSIGNMENT OF ERROR

The trial court erred in sustaining the plaintiff's Motion for Summary Judgment as the plaintiff did not qualify for coverage under the uninsured motorist endorsement of the policy Allstate issued to Robinson.