
In the
Supreme Court of Virginia
At Richmond

Record No. 081331

STEPHEN RANDOLPH SEALS,

Appellant,

– v. –

ERIE INSURANCE EXCHANGE,

Appellee.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	iii
Introduction.....	1
Argument.....	3
I. Erie contracted to provide Seals with UM coverage for the accident	3
A. Law governing insurance policy interpretation.....	3
B. Seals is "anyone we protect" under Erie's UM endorsement because he was using an auto owned by the named insured Atlantic with permission.....	3
II. The UM statute required that Erie cover Seals	6
A. Law governing Virginia's UM statute.....	6
B. Erie has to cover Seals under the UM statute	6
C. This Court has already rejected the argument that Section 2205 allows Erie to escape its contractual and statutory duties to cover Seals here	7
D. <i>GEICO</i> does not conflict with other cases.....	10
III. Erie contracted to provide \$500,000 in UM limits – not zero....	11
A. The Erie policy and the UM statute required Erie to provide Seals with \$500,000 in liability limits	11
B. Seals' position honors the policy behind the UM statute	12

Conclusion..... 14

Addendum

Certificate of Service

TABLE OF AUTHORITIES

Cases

<i>Belton v. Crudup</i> , 273 Va. 368, 641 S.E.2d 74 (2007).....	9
<i>Bryant v. State Farm Mut. Auto. Ins. Co.</i> , 205 Va. 897, 140 S.E.2d 817 (1965).....	13
<i>GEICO v. Universal Underwriters</i> , 232 Va. 326, 350 S.E.2d 612 (1986).....	passim
<i>Nationwide Mutual Insurance Co v. Harleysville Mutual Casualty Co</i> , 203 Va. 600, 125 S.E.2d 840 (1962).....	10, 11

Rules, Statutes and Other Authorities

Va. Code Ann. § 38.2-2205.....	passim
Va. Code Ann. § 38.2-2206.....	passim
Va. Code Ann. § 38.2-2206.A	7 , 12
Va. Code Ann. § 38.2-2206.B	7

INTRODUCTION

Both the plain policy terms and the UM statute, Virginia Code section 38.2-2206, entitle Seals to \$500,000 in UM coverage under the Erie auto policy issued to Atlantic Motors, whose truck Seals was test-driving when an underinsured motorist hit him. The undisputed facts establish that Atlantic owned the truck, Seals had permission to drive it, the policy's liability coverage extended to that truck, and the truck was both a "covered auto" under the Erie UM endorsement and a motor vehicle to which "the policy applies" under the UM statute.

Nonetheless, Erie argues that the truck was not such a "covered auto" because the policy excluded Seals from liability coverage. But that argument cannot withstand the policy terms. Nothing in the policy defining which "autos" Erie covers depends on whether the driver is covered. Indeed, the Erie policy specifies that "any auto" including any "owned" auto falls within its liability coverage.

Besides, the UM statute requires that all permissive users occupying an auto to which a Virginia auto policy applies fall within UM coverage, and the statute trumps any contradictory policy terms.

Erie also argues that because the policy excludes Seals from liability coverage, it provides him with "zero" in liability limits. Because the UM statute requires that UM limits match liability limits, it contends he thus has "zero" in UM limits. But the UM statute never permits "zero" in limits; it requires at least \$25,000 per person and \$50,000 per accident in such limits. Whatever the case, the policy here specifies liability limits of \$500,000, so Erie's argument ignores its plain terms.

And Erie cannot win on any argument that Virginia Code section 38.2-2205 ("section 2205") excludes customers of garagekeepers from the UM statute's requirements, even though it does allow carriers to exclude them from liability coverage. This Court already rejected that argument in *GEICO v. Universal Underwriters*, 232 Va. 326, 329, 350 S.E.2d 612, 614 (1986).

Thus, Seals respectfully requests that this Court reverse the trial court and hold the Erie policy provides him \$500,000 in UM coverage.

ARGUMENT

I. **Erie contracted to provide Seals with UM coverage for the accident**

A. **Law governing insurance policy interpretation**

Erie does not dispute that Seals' opening brief sets forth the correct policy interpretation rules:

- The policy's plain language controls;
- If a policy can be read in more than one way, it is ambiguous; and
- All such ambiguities resolve against Erie.¹

They apply to the Erie policy terms below.

B. **Seals is "anyone we protect" under Erie's UM endorsement because he was using an auto owned by the named insured Atlantic with permission**

Erie argues that UM coverage does not extend to Seals for the accident because he was not "anyone we protect" because the auto he was "occupying" was not a "covered auto."²

But the Erie policy's UM terms shred that argument. Erie's UM endorsement provides:

¹ Seals' Opening Brief ("Br.") at 10-11

² Opp'n at 5-7

- "We will pay . . . all sums that 'anyone we protect' is legally entitled to recover as damages from the owner or operator of an 'uninsured motor vehicle.'"³
- "'[A]nyone we protect' means . . . anyone . . . 'occupying' a 'covered auto.'"⁴
- And "covered auto" means "a motor vehicle . . . with respect to which the 'bodily injury' or 'property damage' liability coverage of the policy applies."⁵
- "Autos we insure" in the liability section means "'autos' that are defined in the 'autos we insure' section of the policy."⁶
- The "autos we insure" section in turn says: "[t]he 'declarations' shows [sic] which of the following are 'autos we insure' under this policy."⁷
- "Declarations" means "the form which shows [Atlantic's] coverages, limits of protection, 'autos we insure', premium charges, and other information."⁸
- That form defines "autos we insure" as "any auto – owned, hired & non-owned autos."⁹ "[O]wned autos" includes "'autos' you own."¹⁰

Erie does not dispute that Atlantic owned the truck Seals test-drove, nor that he "occupied" that auto while test-driving it.¹¹

³ JA 39

⁴ JA 38

⁵ JA 38

⁶ JA 10

⁷ JA 12

⁸ JA 10

⁹ JA 6

¹⁰ JA 12

Rather, Erie's brief confuses two separate issues: (1) whether an "auto" is covered under the liability terms; and (2) whether Seals himself is covered by those liability terms. Admittedly, the Erie terms exclude Seals from liability coverage. But the policy terms do not exclude the auto he test-drove. Nothing in how the policy defines "autos we insure" hinges on who drove the vehicle. So whether Seals is personally excluded from liability coverage has no bearing on the Atlantic truck's status as an "auto we insure" under liability coverage or a "covered auto" under UM coverage.

Indeed, the Erie policy presumably provides Atlantic – the truck's owner – with liability coverage in connection with the accident here. For example, if a person injured in an accident like this were to sue Atlantic directly, perhaps claiming Atlantic failed to properly maintain the truck, nothing in the policy would exclude Atlantic from liability coverage. The truck is a "covered auto."

In sum, an underinsured driver hurt Seals while he "occupied" a "covered auto" with Atlantic's permission.¹¹ So the UM coverage terms include him. While Erie argues otherwise – claiming that Seals'

¹¹ JA 3 at ¶¶ 13-14

¹² *Id.*

"argument ignores the plain language of the policy" ¹³ – the policy's words do not support Erie's rhetoric.

II. The UM statute required that Erie cover Seals

A. Law governing Virginia's UM statute

Erie also does not challenge the rules that Seals' opening brief offers on how to apply Virginia's UM statute:

- Unambiguous words determine meaning and intent;
- Courts cannot add to or take from statutory language;
- When a statute speaks in specific terms, it is implied that the General Assembly did not intend to include any omitted terms;
- The UM statute should be construed liberally in favor of protecting injured persons; and
- When a policy issued in Virginia conflicts with the UM statute, the UM statute trumps the policy terms. ¹⁴

B. Erie has to cover Seals under the UM statute

Just as with the policy terms, Erie contends that Seals "ignores the . . . language used by the legislature in [the UM statute]." ¹⁵ But the UM statute's actual text dooms that empty charge.

¹³ Opp'n at 5

¹⁴ Br. at 12-13

The UM statute requires all Virginia auto policies cover all "insureds" as defined in the statute. Va. Code Ann. § 38.2-2206.A. "[I]nsureds" includes "any person who uses the motor vehicle to which the policy applies, with the expressed or implied consent of the named insured" Va. Code Ann. § 38.2-2206.B.

Nobody disputes that the UM statute applies to the Atlantic truck here,¹⁶ that Seals was using that truck when the accident happened,¹⁷ or that he had Atlantic's permission to test-drive that truck.¹⁸ And, as detailed above, that truck is a "motor vehicle to which the [Erie] policy applies," as Atlantic owned the truck.

So Seals must have UM coverage under the Erie policy – the UM statute allows nothing else.

C. This Court has already rejected the argument that section 2205 allows Erie to escape its contractual and statutory duties to cover Seals here

Based on the transcript, it appears that the trial court concluded it had to harmonize the UM statute and section 2205, which addresses liability coverage for garagekeepers.

¹⁵ Opp'n at 5

¹⁶ JA 6 (Policy address shows delivery to a Virginia named insured)

¹⁷ JA 3 at ¶¶ 13-14

¹⁸ *Id.*

The trial court said the "specific controls [the] general" and thus contended that the "specific" section 2205 controlled the "general" UM statute.¹⁹ The trial court also objected that Seals' counsel was ignoring section 2205's text and relying only on section 2206.²⁰

But this Court has already rejected that approach in *GEICO v. Universal Underwriters*, 232 Va. 326, 329, 350 S.E.2d 612, 614 (1986). *GEICO* held that that the garagekeeper's exclusion now in section 2205 and the requirements now in the UM statute should not be read together. (That case addressed a prior statute's nearly identical text.)

In reaching that result, this Court noted that the UM statute had exceptions, but none for garagekeepers. *Id.* "Had the General Assembly intended to create an exception to the UM mandate for the benefit of a garage keeper and its insurer, it could have done so in language such as that employed [in the garagekeepers' liability exclusion]. It did not do so. We do not assume that omission was inadvertent. Rather, we conclude that the legislature was consciously and deliberately selective." *Id.*

¹⁹ JA 128:22-24

²⁰ JA 129:5-7

Essentially, *GEICO* applied the maxim *expressio unius est exclusio alterius*. Under that maxim, "when the General Assembly sets forth specific exceptions to the general applicability of a statute, those exceptions are deemed to be the only ones the legislature intended to make available." *Belton v. Crudup*, 273 Va. 368, 373, 641 S.E.2d 74, 77 (2007).

Erie appears to agree with Seals on this point. Erie "concedes that [section 2205], by its plain terms, applies only to garage liability policies."²¹ But it still tries to distinguish *GEICO*, arguing that case "merely held that the garage keeper's exclusion statute did not apply to UM/UIM coverage, due to the fact that the statute only explicitly referred to liability coverage."²²

That effort to dodge *GEICO* misses this key point – all policies issued in Virginia must include the UM coverage mandated by the UM statute. And the UM statute requires coverage for all who permissively use an auto to which the policy applies.

Here, by their plain terms, both the Erie policy and the UM statute apply to the Atlantic truck that Seals test-drove. As *GEICO* notes, the UM statute itself has no exception for the customers of

²¹ Opp'n at 10 n. 6

²² Opp'n at 10

garagekeepers. If section 2205 or some other statute does not create such an exception for UM coverage (and even Erie agrees section 2205 does not affect the UM statute), no such exception can exist under any Virginia policy.

D. GEICO does not conflict with other cases

Failing to distinguish *GEICO*, Erie suggests that *Nationwide Mutual Insurance Co v. Harleysville Mutual Casualty Co*, 203 Va. 600, 125 S.E.2d 840 (1962), somehow erodes *GEICO*'s later-issued, on-point holding.

To do so, it makes these two arguments:

- "In [*Harleysville*], this Court held that the 'policy applies' to a motor vehicle only when the operator was a permissive user."
- "This Court declined to hold that simply because a motor vehicle is on the policy, the policy applies to the motor vehicle."²³

That first statement is incorrect; the second misleading.

Harleysville hinged on whether the auto in an accident was being used with the owner's permission when that accident happened. This Court agreed it was not, it and found no UM coverage as a result.

²³ Opp'n at 6

Harleysville did not address – let alone analyze – whether the policy generally "applie[d]" to that auto under the UM statute. It had no need, given the lack of permissive use.

Erie's second argument is therefore technically accurate in saying the Court "declined" to find that "simply because a motor vehicle is on the policy, the policy applies to the motor vehicle." But that assertion – in using the word "declined" – implies some analysis exists on that point in that opinion. There is none.

III. Erie contracted to provide \$500,000 in UM limits – not zero

A. The Erie policy and the UM statute required Erie to provide Seals with \$500,000 in liability limits

Unable to distinguish *GEICO* or offer contradictory authority,

Erie attempts to elude that case with this two-step argument:

- The Erie policy excluded Seals from liability coverage, so it provides Seals with "zero" in liability limits;
- And the UM statute requires that UM limits match liability limits, so the policy must provide Seals with "zero" in UM limits, too, no matter the policy terms.²⁴

But the UM statute never allows "zero" in UM limits for a Virginia policy. Rather, all such policies must provide at least

²⁴ Opp'n at 10-12

\$25,000 per person and \$50,000 per accident in UM limits. Va. Code Ann. § 38.2-2206.A.

Besides, that argument ignores the Erie policy's terms. Its liability section says Erie "will pay no more than the limit(s) shown on the 'Declarations' for one 'auto' in any one accident" ²⁵ The declarations list "\$500M" in limits. ²⁶ No endorsement modifies those limits. So those are the limits that the UM limits must – and do – match. ²⁷

B. Seals' position honors the policy behind the UM statute

In a further effort to skirt its contractual and statutory duties, Erie makes this remarkable argument:

[I]f an automobile dealership were required to provide UM/UIM coverage to its customers even when it has no obligation to provide liability coverage, the benefit explicitly provided by the General Assembly in [section 2205] would be significantly reduced." ²⁸

²⁵ JA 16

²⁶ JA 6

²⁷ As noted in the opening brief, it does not appear that this Court has addressed where to find or how to determine the liability limits that the UM limits must match.

²⁸ Opp'n at 11

But nothing from the General Assembly even hints – let alone "explicitly provide[s]" – that it intended to benefit garagekeepers like Atlantic, or their carriers like Erie, by excepting customers of garagekeepers from state-mandated UM coverage.

In fact, *GEICO* made exactly that point: "[h]ad the General Assembly intended to create an exception to the UM mandate for the benefit of a garage keeper and its insurer, it could have done so in language such as that employed [in the garagekeepers' liability exclusion]. It did not do so." 232 Va. at 329, 350 S.E.2d at 614.

This Court instead stated the policy that applies to this case in *Bryant v. State Farm*: "the uninsured motorist law was enacted for the benefit of injured persons," and "it is to be liberally construed so that the purpose intended may be accomplished." *Bryant v. State Farm Mut. Auto. Ins. Co.*, 205 Va. 897, 900, 140 S.E.2d 817, 819 (1965).

Thus, that Erie argument fails, too; so it owes Seals \$500,000 in UM coverage.

CONCLUSION

Erie contracted to provide Seals with \$500,000 in UM coverage, as he was a permissive user of an Atlantic auto insured under its liability coverage. Nothing in Erie's policy, the UM statute, or any other statute allows Erie to escape that contract. Hence, Seals respectfully requests that this Court reverse the trial court and declare that Erie provides him with \$500,000 in UM coverage for the accident.

Respectfully submitted,

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ADDENDUM

§ 38.2-2205. Liability insurance on motor vehicles; standard provisions; applicability of other valid and collectible insurance

A. 1. Each policy or contract of bodily injury or property damage liability insurance which provides insurance to a named insured in connection with the business of selling, leasing, repairing, servicing, storing or parking motor vehicles, against liability arising from the ownership, maintenance, or use of any motor vehicle incident thereto shall contain a provision that the insurance coverage applicable to those motor vehicles shall not be applicable to a person other than the named insured and his employees in the course of their employment if there is any other valid and collectible insurance applicable to the same loss covering the other person under a policy with limits at least equal to the financial responsibility requirements specified in § 46.2-472. Such provision shall apply to motor vehicles which are either for the purpose of demonstrating to the other person as a prospective purchaser, or which are loaned or leased to the other person as a convenience during the repairing or servicing of a motor vehicle for the other person, or leased to the other person for a period of six months or more. This provision shall apply whether such repair or service is performed by the owner of the vehicle being loaned or leased or by some other person or business.

2. If the other valid and collectible insurance has limits less than the financial responsibility requirements specified in § 46.2-472, then the coverage afforded a person other than the named insured and his employees in the course of their employment shall be applicable to the extent necessary to equal the financial responsibility requirements specified in § 46.2-472.

3. If there is no other valid and collectible insurance available, the coverage under such policy afforded a person, other than the named insured and his employees in the course of their employment, shall be applicable, but the amount recoverable in such case shall not exceed the financial responsibility requirements specified in § 46.2-472. If there is no other valid and collectible collision or upset insurance available and if such policy provides insurance to the named insured for collision or upset, it shall include any such other person as an additional insured, unless in the

case of a leased vehicle such other person receives a conspicuous written disclosure at the commencement of the lease, warning such person that he is not an additional insured under the owner's policy for collision or upset coverage.

B. 1. Any policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle shall exclude coverage to persons other than (i) the named insured, or (ii) directors, stockholders, partners, agents, or employees of the named insured, or (iii) residents of the household of either (i) or (ii), while those persons are employed or otherwise engaged in the business of selling, repairing, servicing, storing, or parking motor vehicles if there is any other valid or collectible insurance applicable to the same loss covering the persons under a policy with limits at least equal to the financial responsibility requirements specified in § 46.2-472.

2. If the other valid and collectible insurance has limits less than the financial responsibility requirements specified in § 46.2-472, then the coverage afforded a person other than the named insured while that person is employed or otherwise engaged in the business of selling, repairing, servicing, storing, or parking motor vehicles shall be applicable to the extent necessary to equal the financial responsibility requirements specified in § 46.2-472.

3. If there is no other valid and collectible insurance available, the coverage afforded a person other than the named insured while that person is employed or otherwise engaged in the business of selling, repairing, servicing, storing, or parking motor vehicles shall apply, but the amount recoverable shall not exceed the financial responsibility requirements specified in § 46.2-472.

§ 38.2-2206. Uninsured motorist insurance coverage

A. Except as provided in subsection J of this section, no policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle shall be issued or delivered in this Commonwealth to the owner of such vehicle or shall be issued or delivered by any insurer licensed in this Commonwealth upon any motor vehicle principally garaged or used in this Commonwealth unless it contains an endorsement or provisions undertaking to pay the insured all sums that he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits not less than the requirements of § 46.2-472. Those limits shall equal but not exceed the limits of the liability insurance provided by the policy, unless any one named insured rejects the additional uninsured motorist insurance coverage by notifying the insurer as provided in subsection B of § 38.2-2202. This rejection of the additional uninsured motorist insurance coverage by any one named insured shall be binding upon all insureds under such policy as defined in subsection B of this section. The endorsement or provisions shall also obligate the insurer to make payment for bodily injury or property damage caused by the operation or use of an underinsured motor vehicle to the extent the vehicle is underinsured, as defined in subsection B of this section. The endorsement or provisions shall also provide for at least \$ 20,000 coverage for damage or destruction of the property of the insured in any one accident but may provide an exclusion of the first \$ 200 of the loss or damage where the loss or damage is a result of any one accident involving an unidentifiable owner or operator of an uninsured motor vehicle.

B. As used in this section, the term "*bodily injury*" includes death resulting from bodily injury.

"Insured" as used in subsections 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.

"Uninsured motor vehicle" means a motor vehicle for which (i) there is no

bodily injury liability insurance and property damage liability insurance in the amounts specified by § 46.2-472, (ii) 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, (iii) there is no bond or deposit of money or securities in lieu of such insurance, (iv) the owner of the motor vehicle has not qualified as a self-insurer under the provisions of § 46.2-368, or (v) the owner or operator of the motor vehicle is immune from liability for negligence under the laws of the Commonwealth or the United States, in which case the provisions of subsection F shall apply and the action shall continue against the insurer. A motor vehicle shall be deemed uninsured if its owner or operator is unknown.

A motor vehicle is "*underinsured*" when, and to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and available for payment for such bodily injury or property damage, including all bonds or deposits of money or securities made pursuant to Article 15 (§ 46.2-435 et seq.) of Chapter 3 of Title 46.2, is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the vehicle.

"Available for payment" means the amount of liability insurance coverage applicable to the claim of the injured person for bodily injury or property damage reduced by the payment of any other claims arising out of the same occurrence.

If an injured person is entitled to underinsured motorist coverage under more than one policy, the following order of priority of policies applies and any amount available for payment shall be credited against such policies in the following order of priority:

1. The policy covering a motor vehicle occupied by the injured person at the time of the accident;
2. The policy covering a motor vehicle not involved in the accident under which the injured person is a named insured;
3. The policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Where there is more than one insurer providing coverage under one of the payment priorities set forth, their liability shall be proportioned as to their respective underinsured motorist coverages.

Recovery under the endorsement or provisions shall be subject to the conditions set forth in this section.

C. There shall be a rebuttable presumption that a motor vehicle is uninsured if the Commissioner of the Department of Motor Vehicles certifies that, from the records of the Department of Motor Vehicles, it appears that: (i) there is no bodily injury liability insurance and property damage liability insurance in the amounts specified by § 46.2-472 covering the owner or operator of the motor vehicle; or (ii) no bond has been given or cash or securities delivered in lieu of the insurance; or (iii) the owner or operator of the motor vehicle has not qualified as a self-insurer in accordance with the provisions of § 46.2-368.

D. If the owner or operator of any motor vehicle that causes bodily injury or property damage to the insured is unknown, and if the damage or injury results from an accident where there has been no contact between that motor vehicle and the motor vehicle occupied by the insured, or where there has been no contact with the person of the insured if the insured was not occupying a motor vehicle, then for the insured to recover under the endorsement required by subsection A of this section, the accident shall be reported promptly to either (i) the insurer or (ii) a law-enforcement officer having jurisdiction in the county or city in which the accident occurred. If it is not reasonably practicable to make the report promptly, the report shall be made as soon as reasonably practicable under the circumstances.

E. If the owner or operator of any vehicle causing injury or damages is unknown, an action may be instituted against the unknown defendant as "John Doe" and service of process may be made by delivering a copy of the motion for judgment or other pleadings to the clerk of the court in which the action is brought. Service upon the insurer issuing the policy shall be made as prescribed by law as though the insurer were a party defendant. The provisions of § 8.01-288 shall not be applicable to the service of process required in this subsection. The insurer shall have the right to file pleadings and take other action allowable by law in the name of John Doe.

F. If any action is instituted against the owner or operator of an uninsured or underinsured motor vehicle by any insured intending to rely on the uninsured or underinsured coverage provision or endorsement of this policy under which the insured is making a claim, then the insured shall serve a copy of the process upon this insurer in the manner prescribed by law, as though the insurer were a party defendant. The provisions of [§ 8.01-288](#) shall not be applicable to the service of process required in this subsection. The insurer shall then have the right to file pleadings and take other action allowable by law in the name of the owner or operator of the uninsured or underinsured motor vehicle or in its own name. Notwithstanding the provisions of subsection A, the immunity from liability for negligence of the owner or operator of a motor vehicle shall not be a bar to the insured obtaining a judgment enforceable against the insurer for the negligence of the immune owner or operator, and shall not be a defense available to the insurer to the action brought by the insured, which shall proceed against the named defendant although any judgment obtained against an immune defendant shall be entered in the name of "Immune Defendant" and shall be enforceable against the insurer and any other nonimmune defendant as though it were entered in the actual name of the named immune defendant. Nothing in this subsection shall prevent the owner or operator of the uninsured motor vehicle from employing counsel of his own choice and taking any action in his own interest in connection with the proceeding.

G. Any insurer paying a claim under the endorsement or provisions required by subsection A of this section shall be subrogated to the rights of the insured to whom the claim was paid against the person causing the injury, death, or damage and that person's insurer, although it may deny coverage for any reason, to the extent that payment was made. The bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action shall not bar the insured from bringing an action against the owner or operator proceeded against as John Doe, or against the owner's or operator's insurer denying coverage for any reason, if the identity of the owner or operator who caused the injury or damages becomes known. The bringing of an action against an unknown owner or operator as John Doe shall toll the statute of limitations for purposes of bringing an action against the owner or operator who caused the injury or damages until his identity becomes known. In no event shall an action be brought against an owner or operator who caused the injury or damages, previously filed against as John Doe, more than three years from the commencement of the action against the unknown owner or operator as

John Doe in a court of competent jurisdiction. Any recovery against the owner or operator, or the insurer of the owner or operator shall be paid to the insurer of the injured party to the extent that the insurer paid the named insured in the action brought against the owner or operator as John Doe. However, the insurer shall pay its proportionate part of all reasonable costs and expenses incurred in connection with the action, including reasonable attorney's fees. Nothing in an endorsement or provisions made under this subsection nor any other provision of law shall prevent the joining in an action against John Doe of the owner or operator of the motor vehicle causing the injury as a party defendant, and the joinder is hereby specifically authorized. No action, verdict or release arising out of a suit brought under this subsection shall give rise to any defenses in any other action brought in the subrogated party's name, including res judicata and collateral estoppel.

H. No endorsement or provisions providing the coverage required by subsection A of this section shall require arbitration of any claim arising under the endorsement or provisions, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

I. Except as provided in [§ 65.2-309.1](#), the provisions of subsections A and B of [§ 38.2-2204](#) and the provisions of subsection A of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer under any workers' compensation law, or to the extent that it covers liability to which the Federal Tort Claims Act applies. No provision or application of this section shall limit the liability of an insurer of motor vehicles to an employee or other insured under this section who is injured by an uninsured motor vehicle; provided that in the event an employee of a self-insured employer receives a workers' compensation award for injuries resulting from an accident with an uninsured motor vehicle, such award shall be set off against any judgment for damages awarded pursuant to this section for personal injuries resulting from such accident.

J. Policies of insurance whose primary purpose is to provide coverage in excess of other valid and collectible insurance or qualified self-insurance may include uninsured motorist coverage as provided in subsection A of this section. Insurers issuing or providing liability policies that are of an excess or umbrella type or which provide liability coverage incidental to a

policy and not related to a specifically insured motor vehicle, shall not be required to offer, provide or make available to those policies uninsured or underinsured motor vehicle coverage as defined in subsection A of this section.

K. A liability insurance carrier providing coverage under a policy issued or renewed on or after July 1, 1988, may pay the entire amount of its available coverage without obtaining a release of a claim if the claimant has underinsured insurance coverage in excess of the amount so paid. Any liability insurer making a payment pursuant to this section shall promptly give notice to its insured and to the insurer which provides the underinsured coverage that it has paid the full amount of its available coverage.

CERTIFICATE OF SERVICE

The undersigned hereby certifies the following:

- 1) The appellant is Stephen Randolph Seals
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- 5) Three copies of the foregoing Reply Brief of Appellant were mailed or delivered to counsel for the appellee at the above address on this the 12th day of January, 2009. This same date, 12 copies of the Brief were hand delivered to the clerk's office and a copy was filed electronically at scvbrieffs@courts.state.va.us.

/s/ John J. Rasmussen