



**CONNECTICUT TRIAL LAWYERS ASSOCIATION**

**Support H.B. No. 5730 (Raised), As Amended (Attached)**

The Connecticut Trial Lawyers Association supports H.B. No. 5730 (Raised), "An Act Concerning the Presumption of Uninsured Motorist Status of a Tortfeasor After Reasonable Search by the Insured". We would, however, suggest that the Committee consider amending the bill for two reasons – to apply the bill to underinsured motorist as well as uninsured motorist cases and to allow persons other than the attorney for the injured party to attest to the uninsured/underinsured motorist status of the person who caused injury.

Every Connecticut citizen who purchases automobile liability insurance also buys as part of that policy uninsured/underinsured motorist coverage. While the coverage is compulsory, the consumer decides what an adequate amount of coverage for their family is. The coverage is designed to protect people where they are injured as a result of the negligence of another driver who has no insurance, or who has inadequate insurance.

The persons (tortfeasors) causing these accidents who have no insurance are driving illegally. In order to present a claim to the uninsured motorist carrier on behalf of the victim of such criminal activity, the carrier typically requires an affidavit from the tortfeasor that he/she either had no insurance at the time of the accident or if they had insurance what the amount of that coverage was. When approached for such an affidavit, too often these tortfeasors will not cooperate and sign the affidavit. As a result of that refusal to sign the affidavit, the injured person cannot take advantage of the insurance coverage they purchased. When the injured person presents the claim to his/her own insurance company, the claim is denied because the injured person has not proven that the car was uninsured or underinsured.

These claims are not being denied because there is insurance for the tortfeasor. They are being denied because neither the injured person nor the uninsured motorist carrier knows whether or not there is insurance. What the proposed legislation simply does is allow an injured person to present a claim for their injuries where the insured status of the tortfeasor cannot be established by anyone.

Too often uninsured motorist carriers know that the tortfeasor is uninsured but because the injured person cannot prove it, the claim is denied. Sometimes, due to an uncooperative tortfeasor it is impossible to prove their insurance status. The proposed legislation would allow an injured person or his/her attorney to retain a licensed investigator to make efforts to determine the insurance status. If the results are inconclusive, the investigator would be able sign an affidavit setting forth their efforts to determine the insurance status.

At that point, pursuant to the bill, the burden would simply shift to the uninsured motorist carrier to prove the tortfeasor's insurance status. The carrier would have 120 days itself to determine the insurance status of the tortfeasor. If after the 120 days has expired, and the status cannot be determined, the tortfeasor would be deemed either uninsured or underinsured as the case may be.

The bill would also allow a person with direct knowledge of the tortfeasor's insurance status to shift the burden of proof to the insurance company. For example, if a parent of the tortfeasor can attest to the fact that their son/daughter was uninsured an affidavit signed by the parent would be sufficient. Or, if the tortfeasor had a minimal \$20,000 liability policy which was tendered by the liability carrier that too would be sufficient to shift the burden to the underinsured motorist carrier to prove.

The following three anecdotes are illustrative of the problem faced by hundreds of injured people around Connecticut. Steven is a 24 year old delivery driver. His vehicle was struck in the rear on July 8, 2004 in Bethel. He suffered numerous orthopedic injuries for which he sought treatment. He had no health insurance to pay his medical bills which total approximately \$6,000.00 and he does not have the means to pay them. He is left with a permanent injury to his shoulder and back. The man who was driving the car that struck Steven was insured with Progressive Insurance and had a liability policy in the amount of \$20,000, the state minimum. Several months ago, Progressive offered to pay \$20,000.00 to settle the claim. Progressive provided a copy of the tortfeasor's insurance policy demonstrating coverage in the amount of \$20,000 and a letter saying he had no other insurance with Progressive. However, Progressive could not provide me with an affidavit from their insured saying there was no other insurance as their insured was not cooperating with them. I contacted Steven's underinsured motorist carrier, Response Insurance to ask if they were satisfied that there was no other insurance, and they told me that they would require an affidavit from the tortfeasor. Therefore, a lawsuit had to be filed in Danbury Superior Court for the limited purpose of taking the tortfeasor's deposition to establish no other insurance. Instead of receiving the \$20,000 months ago, Steven's settlement has been delayed and his doctors who for two years have patiently waited for payment of their bills have been forced to place him into collections.

David is self employed as an independent insurance adjuster. On August 3, 2003 David was traveling along Route 7 in New Milford at 6:00 in the morning when a drunk driver crossed the center line of the roadway and struck his vehicle head on. There was a tremendous impact. David suffered numerous injuries including a fractured clavicle. The man who hit David was charged with multiple offenses including driving while intoxicated. After being charged, the tortfeasor fled the country and never returned. The man who hit David had a \$20,000 policy which was quickly tendered by his insurance company along with a copy of the policy and a letter saying that there was no other insurance available. However, an affidavit of no other insurance from the tortfeasor could not be obtained as the man had fled the country. When initially presented with the claim, the underinsured motorist carrier refused to accept the claim as there was insufficient proof of insurance. Fortunately, a new adjuster was assigned to the file who accepted the claim. However, David was at the whim of an adjuster as to whether the claim would be accepted as he would never be able to obtain an affidavit from the tortfeasor.

Deirdre, a registered nurse, was injured in a car accident in August of 2004. The person who caused the accident fled the scene on foot. However, a witness to the accident recognized the perpetrator and provided the police with that person's identity. When that person was later interrogated by police, he denied being the driver. That person later disappeared and could not be found. The registered owner of the car could also not be located. It was the suspicion of the New Haven Police Department that the driver was an illegal alien. Our office hired a private investigator to track the driver and owner down but without any success. According to the Department of Motor Vehicles the vehicle was insured by Sentry Insurance but in December of 2004 Sentry wrote that it had cancelled the policy prior to the accident. Deirdre had a broken arm which required two surgeries to fix. Deirdre presented an uninsured motorist claim to her carrier Allstate. Allstate initially refused to accept the claim, arguing that the driver and owner had both been identified and that their uninsured motorist status had not been established. A lawsuit was filed against the individual named in the lawsuit in order to try and take a deposition of him to determine insurance status. Finally in June of 2005, Allstate accepted the claim and paid out the full amount of its uninsured motorist policy.

The proposed legislation would simply stream line the uninsured/underinsured motorist process. It would allow the uninsured motorist status to be established after reasonable efforts by the injured person and also after allowing the uninsured motorist carrier a reasonable time to conduct its own investigation into the insurance status of the tortfeasor. The amendment to the bill which is attached hereto, applies the new bill to both uninsured and underinsured motorist claims.

Secondly, the amendment allows the affidavit reflecting reasonable efforts to be filed by a licensed private investigator or other person with direct knowledge. The bill as it presently exists requires the injured person or their attorney to file the affidavit. We submit that is not workable. The injured person does not know what efforts have been made to determine insurance status and cannot sign an affidavit based upon direct knowledge. If the injured person's attorney files the affidavit, the attorney may later be disqualified as counsel if they are called to testify as a witness as to those efforts. The amendment would allow a licensed private investigator or other person with direct knowledge to file instead.

The purpose of the legislation is to require insurance companies to pay on claims which are truly uninsured or underinsured motorist claims. The customer has paid for the coverage and should not be prevented from taking advantage of that coverage because a tortfeasor, who may have been driving illegally without insurance, will not cooperate and sign an affidavit.

Respectfully Submitted,

Douglas P. Mahoney