



Risk Manager

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[Virginia Passes UIM Statute Amendment](#)

By: [Erin McNeill](#).

During the 2010 session of the Virginia General Assembly, [House Bill 93](#) (“HB 93”) was passed to amend Virginia’s existing underinsured motorist insurance statute, Virginia Code Section [38.2-2206](#) (“UIM Statute”), in an attempt to address concerns that UIM carriers could force protracted litigation because no incentives or penalties existed to encourage them to sit in good faith at the negotiating table during litigation. Prior to the passage of HB 93, the liability carrier was required to shoulder the cost to defend its insured and protect the insured from an excess verdict or a future [subrogation](#) claim by the UIM carrier, while the UIM carrier could simply sit passively and monitor the underlying case with little to no defense costs and no threat of an [excess verdict](#) against its insured.

HB 93 creates what is frequently referred to as a “dump and run” provision in the UIM Statute to address these concerns. It allows an underlying liability carrier to be relieved of the costs of defending its insured owner or operator of a motor vehicle in a personal injury and/or property damage action. Under the amended UIM Statute, a liability carrier may make an irrevocable offer in writing to pay the limits of its insurance policy to the carrier providing underinsured motorist (hereinafter “UIM”) coverage. Once coverage is tendered in writing by the liability carrier, then the UIM carrier has 60 days to assume the cost of the defense.

Once the defense is tendered, the liability carrier still retains its duty to defend the action. As a result, it appears that the attorney retained by the liability carrier will continue as counsel in the case. It also appears that logistically, the liability carrier continues to pay these costs directly, but is then reimbursed by the UIM carrier. If there are multiple UIM policies available, then the cost of the defense will be assumed in the same order of priority as previously established by the UIM statute.

HB 93 does clearly establish that in the event a case is dismissed or a verdict in an amount equal or less than the tendered liability coverage, then the offer will not apply. One issue that caused concern to the [Virginia Association of Defense Attorneys](#) is that HB 93 is silent as to the issue of subrogation. An attorney for an insured faced with suit in excess of policy limits holds an ethical obligation to make sure that the insured is

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personally protected. That frequently means that a defense attorney will not recommend that policy limits be tendered without an agreement from the UIM carrier to waive its subrogation rights against the insured. With its failure to address this very important issue, HB 93 may have little effect on defense attorneys' recommendations to tender policy limits in excess coverage cases and may not adequately address the concern that UIM carriers sometimes force protracted litigation.

HB 93 is scheduled to go into effect on July 1, 2010. If you would like to discuss this opinion further, please feel free to contact [Jayne Pemberton](#) or any of the other members of the [Sands Anderson Risk Management](#) team.

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