The Virginia State Bar requires that all lawyers set forth the following regarding case results: "**CASE RESULTS DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE. CASE RESULTS DO NOT GUARANTEE OR PREDICT A SIMILAR RESULT IN ANY FUTURE CASE UNDERTAKEN BY THE LAWYER.**"

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

SARAH HUGH,	*	
	*	
Plaintiff	*	
	*	
v.	*	AT LAW NO: 10-1429
	*	
MILDRED CARR-HILMER,	*	**[NAMES HAVE BEEN CHANGED**
and	*	**TO PRESERVE PRIVACY]**
TIMOTHY A. ROURKE,	*	
	*	
Defendants	*	

PLAINTIFF'S OPPOSITION TO ST. PAUL FIRE AND MARINE INSURANCE COMPANY'S MOTION TO QUASH SERVICE

COMES NOW the Plaintiff, Sarah Hugh, by counsel, and for her Opposition to St. Paul Fire and Marine Insurance Company's Motion to Quash, states as follows:

ST. PAUL'S POSITION THAT THE WIFE OF A NAMED INSURED MUST BE OCCUPYING A COVERED AUTO LISTED ON THE POLICY FOR UM/UIM COVERAGE TO APPLY UNDER AN AUTO POLICY ISSUED TO HER HUSBAND IS CONTRARY TO 47 YEARS OF BLACK LETTER LAW

The Plaintiff, Sarah Hugh, is the wife of the named insured, Lonnie Hugh, living together in the same household. St. Paul Fire and Marine Insurance Company (hereinafter referred to as "St. Paul") issued a commercial auto policy to Mr. Hugh as the named insured. Mrs. Hugh was injured in an auto owned and driven by Ms. Mildred Carr-Hilmer.

St. Paul argues that Mrs. Hugh is not entitled to UM/UIM coverage under her husband's policy because "the Policy Declarations are explicit that uninsured or underinsured coverage under the policy applies only when insureds occupy autos owned by Lonnie Hugh (the husband)."

St. Paul's position is contrary to 47 years of black letter automobile insurance law:

> **A first class insured (named insured, spouse and family members residing in the same household) are entitled to UM/UIM coverage while occupying <u>any</u> motor vehicle or even outside a motor vehicle, and need not be occupying a vehicle listed on the policy for coverage to apply.**

See the authorities cited below and Plaintiff's attorney's article "Maximizing Your Client's Recovery With Underinsured Motorist Coverage" 21 J.VTLA pp. 15-16 (2009) attached.

The Statute, 38.2-2206 mandates a first class insured is entitled to UM/UIM coverage:

> "while in **<u>a</u>** motor vehicle or otherwise."

Any requirement that a first class insured be occupying a covered auto, such as an auto listed on the declarations page, is contrary to the statute and plainly void.

In <u>Insurance Company of N. Am.</u> v. <u>Perry</u>, 204 Va. 833, 837 (1964), the Supreme Court of Virginia recognized that the legislature had intended to create two separate classes of insureds:

> "**First Class Insureds**: 'An insured of the first class is the named insured and, while resident of the same household, the spouse of the named insured, and relatives of either, while in a motor vehicle or otherwise.' (The 1995 amendment added 'wards, or foster children.')
>
> **Second Class Insureds**: 'Second class insureds are 'any person who uses the motor vehicle to which the policy applies with the express or implied consent of the named insured (a permissive user) and a guest in the motor vehicle to which the policy applies'."

A case that illustrates that a first class insured is not required to be occupying a covered auto is Allstate Insurance Co. v. Meeks, 207 Va. 897 (1967). James Meeks owned two cars, only one car - the Ford, was insured. While driving his uninsured Chevrolet, Meeks was injured by an uninsured motorist. He sought UM coverage under his Allstate policy insuring his other car, the Ford, which he was not driving at the time of the accident.

Allstate argued Meeks was not entitled to UM coverage because he was not occupying a covered auto - listed on the policy. This is the same argument St. Paul advances here to deny Mrs. Hugh coverage -- a first class insured -- just like James Meeks.

The Supreme Court of Virginia rejected Allstate's position granting UM coverage to Meeks since he was a first class insured and thus entitled to UM coverage while occupying **any** motor vehicle -- even his own uninsured Ford which was not listed on the Allstate policy.

Any policy provision that places a limitation upon the statute and conflicts with the statute (here, requiring a first class insured to occupy a covered auto) is "illegal and of no effect." Bryant v. State Farm Mut. Ins. Co., 205 Va. 897 (1965).

Accordingly, the Court is requested to deny St. Paul's Motion to Quash Service as its position is contrary to 47 years of black letter auto insurance law.

SARAH HUGH

By Counsel

_____

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(703) 370-7732 - FAX

VIRGINIA:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY
[Civil Division]

SARAH HUGH,	)	
	)	
Plaintiff,	)	
vs.	)	LAW NO.: CL10-1429
	)	
MILDRED CARR-HILMER,	)	
and	)	
TIMOTHY ROURKE,	)	
	)	
Defendants.	)	

PRAECIPE REMOVING MOTION FROM THE HEARING DOCKET AND WITHDRAWING MOTION

COMES NOW St. Paul Fire and Marine Insurance Company, by and through counsel Walter S. Boone III Esq. and the Law Offices of Roger S. Mackey, and requests that the clerk remove the Motion to Quash Service from the Motions Day Docket for June 24, 2011 as St. Paul Fire and Marine Insurance Company is withdrawing its Motion to Quash Service and will file an Answer to the Complaint pursuant to Section 38.2-2206, Code of Virginia, as amended.

Respectfully submitted,
ST. PAUL FIRE & MARINE INSURANCE CO.
By Counsel

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Law Offices of Roger S. Mackey
14200 Park Meadow Drive, Suite 100 N
Chantilly, Virginia 20151
751-287-6560 Telephone
751-287-6359 Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2011 a copy of the foregoing Praecipewas mailed first class mail, postage prepaid, to:

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Walter S. Boone, III, Esquire

LAW NO.: CL 10-1429