



Law Letter

VOLUME 35 NUMBER 5

SEPTEMBER/OCTOBER 1996

Cases that make a difference

UM coverage for drive-by shooting sustained

VTLA member Charles H. Cuthbert Jr., of Petersburg did not allow a Virginia Supreme Court decision which appeared to deny his client uninsured motorist coverage for a "drive-by" shooting stop him from pursuing that client's claim. As a result, the application of his advocacy skills made a difference in the life of his client.

In *Lexie v. State Farm Mutual Automobile Insurance Co.* (VTLA No. 1520), the Virginia Supreme Court held in April of this year that drive-by shootings did not involve the use of a motor vehicle for purposes of uninsured motorist insurance coverage.

In Mr. Cuthbert's case, *Liberty Mutual Insurance Company v. Hartfield* (Record No. 960842), the Virginia Supreme Court denied a writ to Liberty Mutual which sought to overturn a Circuit Court decision in favor of Cuthbert's client, Mr.

Hartfield. Mr. Hartfield was shot by an unknown driver and the Circuit Court held that his UM claim against his own insurance company was valid in that it resulted from the "use" of a motor vehicle within the meaning of Virginia Code §38.2-2206.

The chief distinguishing feature between the two cases, said Cuthbert, is the trial testimony in which Hartfield indicates that "the unknown driver's ill will arose out of the use of the uninsured motor vehicle." Cuthbert's brief in opposition to the petition of appeal noted that the unknown driver's "motivating ill will had its origin in his belief that Mr. Hartfield had cut him off."

Congratulations to Cuthbert and his client. A copy of the Virginia Supreme Court denial of the writ and of Cuthbert's brief in opposition are both available by calling VTLA at 1-800-267-8852.