Dan Casey: Whose side is insurance company on, anyway?

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Joyce Enderle and her husband, David, were in their Mercury Marquis coming off northbound Interstate 581 at the Elm Avenue exit. The light at the end of the ramp was green when David turned left.

Then pow! An eastbound Ford van, whose driver had run a red light, T-boned their sedan. It was totaled and Joyce, now 79, and David, 75, were injured and ended up in the hospital.

The other driver was charged in the crash; a month later he paid a $100 fine. The man also was uninsured. That meant the Enderles had to collect from their own insurance company.

That's when things got very weird, Joyce told me.

Payment for their 10-year-old car, which was worth about $9,000, was quick. But the Enderles' medical bills exceeded the limits of no-fault "med-pay" coverage on their auto policy. They assumed their uninsured motorist coverage would simply take care those of remaining bills, plus pay them something additional for pain and suffering.

They were wrong.

"The adjuster told us, 'The man who hit you has been in touch with us, and we will represent him. Good luck in getting compensation for your pain and suffering,' " Joyce said.

The Enderles were dumfounded. Their own insurance company was representing the other guy, who didn't even have auto insurance? They couldn't believe it. Joyce called her granddaughter, who owns an insurance agency in Louisiana.

"She said, 'That's crazy. You should get a lawyer,' " Joyce told me. And that's what they did. They hired Daniel L. Crandall & Associates, a large personal-injury law firm in Roanoke, which filed a lawsuit on their behalf.

The Enderles settled their case this past August, 15 months after the wreck. Their former insurance company, State Farm, paid a little more than $54,000. Of that, the Enderles' lawyers got just over $18,000, the typical one-third.

After court fees and paying off all their medical bills, the Enderles wound up with a little more than $12,000. If you add in the $9,000 they got for their car, it comes to $21,000. The car they purchased to replace their totaled Mercury cost $25,000.

The way they look at it, the crash cost them $4,000, plus some lingering aches and pains. You heal slowly, and not necessarily completely, the older you get, you know?

What they'll never be able to fathom is why their own insurance company represented the driver who injured them.

"David and I were so amazed," Joyce told me. So was I.

I had assumed the Enderles had badly misunderstood their insurance adjustor. But after looking into this case and the law, it doesn't appear they misunderstood him at all.

Rather, this is the way Virginia law works in uninsured motorist cases. Dan Crandall said those make up about 5 percent of his vehicle-wreck cases.

In researching this, I called the State Corporation Commission, which oversees the Virginia Bureau of Insurance, which regulates all insurance carriers in the commonwealth.

The standard language on a Virginia auto policy requires the insurance company to "pay all sums the insured is legally entitled to recover from an uninsured motorist," up to their policy limits, said Ken Schrad, an SCC spokesman.

But what does "legally entitled to recover" mean? That question was answered by the Virginia Supreme Court back in 1976. The case was Midwest Mutual Insurance Co. vs. Aetna Casualty and Insurance Co.

"Judgment is the event that establishes legal entitlement to recovery," the court ruled, after taking stock of the law's wording. The court ruling is now a footnote in the Virginia code section that governs uninsured motorist insurance.

Roanoke personal injury lawyer Jeff Krasnow explained the practical effect: An insurer has no obligation to pay its own client on an uninsured motorist claim "unless and until a judgment is obtained" against the uninsured driver.

And naturally, you cannot obtain a judgment until you sue.

Some auto insurance companies won't make you go that legal rigmarole, Krasnow said. But the 1976 court ruling means the decision is up to them. And it gives the insurance company the upper hand.

If you sue, that sets up a bizarre situation: Your own insurance company will step in and represent the uninsured driver who injured you, the client. That's so your own insurer can mitigate the damages they ultimately have to fork over.

And that's exactly what happened in the Enderles' case. Their insurance company hired another Roanoke law firm to defend the uninsured driver who had run the red light and hit the Enderles.

Which might make you wonder if the law was written by some riddle-spouting cat or worm in "Alice's Adventures in Wonderland."

Is this unusual? I put that question to the Virginia Trial Lawyers Association, which referred me to Elliott Buckner, a personal injury lawyer in Richmond. His answer was, not in Virginia.

"It seems counterintuitive," Buckner said. "It seems crazy that it would work that way, but it does. It's not built around common sense."

He can say that again.