SPEAR, J., dissenting. I would affirm the judgment of the trial court. Our Supreme Court has declared that § 2 (e) of Public Acts 1993, No. 93-77 (P.A. 93-77), does not apply retroactively. *Bayusik* v. *Nationwide Mutual Ins. Co.*, 233 Conn. 474, 483–85, 659 A.2d 1188 (1995). Relying on *Bayusik*, we held, in a case similar to this one, that the two year statute of limitations contained in the insurance contract barred the underinsured motorist claim.[1] *Bilodeau* v. *Aetna Casualty & Surety Co.*, 44 Conn. App. 698, 691 A.2d 1115, cert. granted, 241 Conn. 907, 704 A.2d 795 (1997) (appeal withdrawn December 10, 1997).

In *Bayusik*, after determining that the case was governed by § 3 of P.A. 93-77, the Supreme Court refused to apply § 2 (e) of P.A. 93-77. *Bayusik* v. *Nationwide Mutual Ins. Co.*, supra, 233 Conn. 482–85. The court was ''unpersuaded that § 2 (e) of P.A. 93-77, which sets forth the minimum limitation period for insurance policies under § 38a-336, has retrospective applicability. [W]e have uniformly interpreted [General Statutes] § 55-3 as a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only. . . . The legislature only rebuts this presumption when it clearly and unequivocally expresses its intent

that the legislation shall apply retrospectively. . . . The retrospective application of § 2 (e) of P.A. 93-77 would alter the material terms of existing policies, thereby affecting substantive contractual rights and obligations that already had been settled under the express terms of those policies. . . . Although the legislature has the authority, within constitutional limits, to modify existing contractual relationships . . . we conclude that the legislature did not intend to achieve such a result under § 2 (e) of P.A. 93-77.

''Neither the language nor the legislative history of § 2 (e) of P.A. 93-77 supports the conclusion that the legislature intended it to have retrospective application. Unlike § 3 of P.A. 93-77, which by its express terms applies retroactively, § 2 (e) is devoid of language suggesting that it should likewise be applied to modify the terms of contracts already in existence. Indeed, the clarity with which the legislature manifested its intention that § 3 of P.A. 93-77 be given retrospective application strongly suggests that the legislature would have been explicit had it intended § 2 (e) to be similarly applied.'' (Citations omitted; internal quotation marks omitted.) Id., 483–84.

After *Bayusik* was decided, we were presented with the question of whether a plaintiff's claim for underinsured motorist benefits was barred by the two year time limit specified in the insurance policy where she brought suit on an underinsured motorist claim after the passage on May 20, 1993, of P.A. 93-77, but more than three years after the accident. *Bilodeau* v. *Aetna Casualty & Surety Co.*, supra, 44 Conn. App. 699. In *Bilodeau*, the insurance policy required that any underinsured motorist claim be brought within two years from the date of the accident. Because that was not done, the trial court rendered summary judgment in favor of the defendant insurer, determining that the plaintiff's claim was time barred by the contractual limitation period. Id. In affirming the judgment of the trial court, we rejected the plaintiff's claim that § 2 (e) of P.A. 93-77 applied retrospectively ''to invalidate all two year contractual limitations in claims brought after May 20, 1993 . . . .'' Id., 701. We reviewed the language of our Supreme Court in *Bayusik*, which stated that § 2 (e) does not apply retroactively, and we concluded that ''[i]f the legislature intended to invalidate all two year contractual limitations, it would have done so explicitly. . . . Because the plaintiff's claim is not governed by P.A. 93-77, § 3, and because § 2 (e) does not apply to retroactively invalidate the contractual two year time limit, the plaintiff cannot avail herself of the six year statute of limitations.''[2] (Citation omitted.) Id., 702.

The only difference between this case and *Bilodeau* is that in *Bilodeau*, the accident occurred before the passage of P.A. 93-77, and here, the accident occurred

after the passage of P.A. 93-77. That difference is irrelevant because the policies at issue were both in force prior to the passage of P.A. 93-77, and the plaintiffs' actions and the insurers' motions for summary judgment based on the contractual limitation periods were filed after the effective date of that act. Because the appeal was withdrawn after certification was granted in *Bilodeau*, the issue of whether the two year contractual limitation period remains valid under those circumstances has not been decided by our Supreme Court. Unless and until the Supreme Court decides otherwise, we should follow our precedent.

Moreover, I do not view an affirmance here as inequitable or harsh for two reasons. First, the plaintiffs had the benefit of the Supreme Court's suggestion that "[e]nforcement of the two year time limitation does not impose an insuperable burden on an insured, because an action to recover pursuant to the uninsured motorists insurance policy can be timely filed even while claims against the tortfeasor are then being pursued in another forum. *Continental Ins. Co.* v. *Cebe-Habersky*, 214 Conn. 209, 571 A.2d 104 (1990), did not hold that two such lawsuits cannot be initiated simultaneously." *Hotkowski* v. *Aetna Life & Casualty Co.*, 224 Conn. 145, 150 n.6, 617 A.2d 451 (1992). Second, the plaintiffs exhausted the tortfeasor's liability coverage on April 8, 1994. That left almost fifteen months of the two years provided for by the policy within which to bring an action claiming underinsured motorist benefits. By waiting until 1997 to bring such an action, the plaintiffs created the problem from which they now seek relief.

Accordingly, I respectfully dissent.

[1] The defendant here, Allstate Insurance Company, claimed the benefit of the two year contractual limitation period as well as the three year limitation set out in P.A. 93-77.

[2] I do not understand the majority's position that, although § 2 (e) of P.A. 93-77 does not apply retrospectively, it does render "inoperative" contractual limitation periods that are "inconsistent with the statute's requirements." Eliminating the contractual limitation period is a retroactive application of § 2 (e).