

1996

Joseph Ralph Warren v. John Melville : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Joseph Ralph Warren v. John Melville*, No. 960361 (Utah Court of Appeals, 1996).

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 960361-CA

IN THE COURT OF APPEALS

STATE OF UTAH

JOSEPH RALPH WARREN, :

Plaintiff/Appellant, :

vs. : Case No.: 960361-CA

JOHN MELVILLE, : Priority 15

Defendant/Appellee. :

BRIEF OF APPELLEE

APPEAL FROM JUDGMENT OF DISMISSAL ENTERED IN THE
FIFTH JUDICIAL DISTRICT COURT, IN AND FOR WASHINGTON COUNTY,
THE HONORABLE JAMES L. SHUMATE PRESIDING

FILED
Utah Court of Appeals

NOV 14 1996

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JURISDICTIONAL STATEMENT

This matter has been poured over from the Utah Supreme Court, and therefore jurisdiction is conferred upon this court pursuant to Utah Code Ann. § 78-2A-3(2) (j)(Supp. 1996).

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Statement of the issue: Does the statutory tort threshold of the Utah no-fault automobile insurance law¹ violate sections 7, 11, and 24 of Article I of the Utah Constitution.

Standard of review: Because the issue of constitutionality presents a question of law, the appellate courts review the district court's ruling for correctness and accord the trial court no particular deference. Ryan v. Gold Cross Services, Inc., 903 P.2d 423 (Utah 1995). A statute is presumed constitutional and any reasonable doubt should be resolved in favor of constitutionality. Stoker v. Workers' Compensation Fund of Utah, 889 P.2d. 409 (Utah 1994) (312 week limitation on injury related benefits presumed constitutional); Society of Separationists, Inc. v. Whitehead, 870 P.d. 916, 920 (Utah 1993). When addressing the constitutionality of the statute under due process (Article I, sections 7 and 11) or equal protection (Article I, section 24), this court should apply "careful scrutiny" or "realistic rational basis" review.

¹"Utah's no-fault laws" collectively refers to the provisions of chapter 22, Title 31A and chapter 12a, Title 41 of the Utah Code Annotated.

More exactly, as this court reviews the challenged statute under section 7 and section 11 of Article I of the Utah Constitution, this court should apply the test laid out by the Utah Supreme Court in Berry v. Beech Aircraft Corp., 717 P.d. 670 (Utah 1985). In reviewing Utah's no-fault statute under Article I, section 24 of the Utah Constitution, the test as announced in Lee v. Gaufin, 867 P.d. 572 (Utah 1983) should be applied.²

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The text of the following are reproduced in the Addendum to Appellee's Brief: Utah Constitution Article I, sections 7, 11, and 24 as well as Utah Code Ann. § 31A-22-309(1).

STATEMENT OF THE CASE

Appellee has no disagreement with the Appellant's statement of the case.

SUMMARY OF THE ARGUMENT

The plaintiff has admitted that the majority of the purposes of the no-fault statute have been met. There is no question that Utah's no-fault insurance law provides first party compensation, enabling an injured party to obtain prompt recompense for his or her most serious financial needs, without bearing the expense and lengthy delay associated with litigation to establish fault. Plaintiff specifically does not contend that the subject legislation fails to address

²It should be noted as a preliminary matter that Plaintiff's appeal claims a constitutional infirmity on the part of Utah's no-fault statute under state law only. Specifically, Plaintiff has only claimed the statutes are unconstitutional under Article I, sections 7, 11, and 24 of the Utah Constitution. Accordingly, federal constitutional questions have not been raised.

any legitimate government concerns. In fact, the plaintiff has admitted that the direct benefits coverage under the no-fault statutes have resulted in a “laudable improvement” in the expedited payment of pecuniary losses. As the plaintiff notes, this benefit is especially important for those with limited resources who would otherwise be unable to meet their immediate needs. The plaintiff has also conceded that he has not demonstrated that the statute is so shot through with exceptions as to make it incapable of effectively stabilizing or even reducing the costs of automobile insurance.

Instead, the plaintiff has isolated a single component in the much larger statutory scheme which makes up a total remedy which a tort victim in an automobile case may recover. The no-fault statute has no effect on special damages. In exchange for the exclusion of general damage in minor injury cases, plaintiffs receive their no-fault benefit quickly, without the need to adjudicate liability. Moreover, the benefits are paid without regard to comparative negligence. If an insurer is slow to pay, a plaintiff receives interest greater than the law allows for special damages normally, as well as attorney fees.

Utah Code Ann. § 31A-22-309(1) passes constitutional muster when applied to Article I, section 24 of the Utah Constitution. The no-fault laws are constitutional because they are reasonable, have more than a speculative tendency to further the legislative objectives and in fact actually and substantially further the legislative objectives, and finally are reasonably necessary to further a legitimate legislative goal. In order to effectuate a more efficient and equitable

method of handling the greater bulk of personal injury claims arising out of automobile accidents, it was necessary that persons so injured be classified. Utah's no-fault insurance law is neither arbitrary nor unreasonable.

However, before this court must look at the factors announced by the court in Lee v. Gaufin, 867 P.2d 572 (Utah 1983), this court must first find that the statutory classification is discriminatory against a person's constitutional right to a remedy. Since the remedy in this matter has not been completely abrogated, but it has only been modified to provide a different remedy in cases of more minor injury, one cannot find that the classification discriminates against a constitutional right. The majority of the traditional common law remedy remains intact, and in many respects the remedy has actually been expanded, for example by the awarding of attorney fees and interest for failure to timely pay benefits. For these reasons, Utah Code Ann. § 31A-22-309(1) passes constitutional muster when applied to Article I, section 24 of the Utah Constitution.

Utah's no-fault laws withstand due process analysis, including the open courts provision of the Utah Constitution. The Utah Supreme Court in Berry v. Beech Aircraft, 717 P.2d 670 (Utah 1985) held that a statute passes constitutional muster under Article I, sections 7 and 11 if an injured person is provided an effective and reasonable alternative remedy by due course of law. If the benefit provided is substantially equal in value or other benefit to the remedy abrogated, the statute must be found constitutional. In this matter, the no-fault laws of the State

of Utah provide an effective and reasonable alternative remedy. First, the remedy is effective and reasonable since the remedy is almost identical to that which existed in common law. The constitutional interests of the plaintiff in this case, and all other plaintiffs under the no-fault laws, have really not been changed significantly. All out-of-pocket damages are paid, and under the no-fault system, those damages are paid faster and more equitably than under the traditional tort system.

As only one small facet of a remedy has been replaced, the effect on the plaintiff is not substantial. It is true that the form of the substitute is different. However, as the Berry court itself noted, the form of the remedy may be different, and need not necessarily include a judicial remedy. The Utah no-fault statute passes constitutional muster not only because it substitutes an alternative remedy, but the abrogation of any single element of a common law remedy for minor claims is justified because of the social and economic objectives achieved by the enactment of the no-fault statute.

Because Utah's no-fault law is constitutional, Plaintiff's Complaint was properly dismissed. The district court's judgment must therefore be affirmed.

ARGUMENT

The Utah No-fault Insurance Act is not an attempt to dismantle the court system. It is not a grand design to bar the courthouse doors to a citizenry clamoring for justice. The Utah no-fault insurance law retains the best of our tort system, while addressing some of its problems. The

best of our tort system is retained for those whose injuries are not minor. For those with less significant damages, the tort system was a costly, time consuming, inefficient method of providing compensation. The legislature chose to make the system more efficient for those more minor claims. As the analysis hereafter highlights and exhibits, the Utah no-fault insurance laws have achieved their objectives in a reasonable fashion, and therefore the law is constitutional and the judgment of the district court must be affirmed.

Plaintiff's attempt to divert this court from making parallels between the Utah No-Fault Insurance Act and the Workers' Compensation Act is unavailing. The Workers' Compensation Act is a no-fault law. The Utah Supreme Court recently stated:

The act basically creates a no-fault type insurance protection scheme for work related injuries in lieu of traditional common law tort remedies.

Scheppick v. Albertson's, Inc., 297 Utah Adv. Rep. 11 (Utah Supreme Court, August 13, 1996).

The constitutionality of the Workers' Compensation Act has long been decided. Looking to Article I, section 11 of the Utah Constitution, the Utah Supreme Court stated that the constitutionality of compensation acts is too well settled to be questioned. Masich v. United States Smelting, Refining & Mining Co., 191 P.2d 612 (Utah 1948). The court in Masich stated:

The basis for holding such act constitutional is that the state under its police power has the right to require industry to make compensation for damages which the industry itself causes.

Id. at 624. Likewise, the legislature has within its police power the right to require those who use motor vehicles upon the roads of the State of Utah and who are injured by the operation of motor

vehicles amenable to the no-fault laws. In discussing the Article I, section 11 constitutional challenge the Masich court stated:

Here we have a claim that the act, if construed to involve no compensation for partially disabled employees, is unconstitutional because it does not go far enough in providing remedies to injured employees. Had the act provided some measure of compensation for partial disability, then the claim of unconstitutionality could not have been raised, as the employee would have had a redress for the wrong.

Id. Likewise in this case, had the no-fault act affected the plaintiff in this action so that he could not recover his out-of-pocket expenses, plaintiff might have some grounds for argument in the present appeal. But because the plaintiff in this case, and plaintiffs similarly situated, have redress for the damages which they have incurred, the statute is constitutional. The Masich court noted:

It has always been contended by employers that the act offended the due process clause because it abolished certain defenses such as contributory negligence [of the] fellow servant, and assumption of the risk, and by the employee because it abolished the common law right of action for negligence. The contention has been however overruled because no one has a vested right in any rule of law. A statutory right can be taken away and it may vest the individual with a right as sacred and important as one existing under common law principles.

...

If the legislature were to abolish all compensation and all common law rights for negligence of an employer, no contention could reasonably be made that it was a proper exercise of the police power. The reverse would be true and pauperism and its concomitants of vice and crime would flourish. However, if the main purpose of the act is to assess the costs of injury and disease against the industry, the welfare of the employee is improved and the act is constitutional. The fact that under the act certain of the employees are denied their common law right, and at the same time only given compensation conditioned upon reaching a stage of total disability, does not offend against the constitution and certain individual rights and remedies can be made to yield to

the public good. The humanitarian principals of the occupational disease act do overcome in part, the inadequacy of relief of common law for a class of employees, and the act should not be discarded because some members of the class have rights, which may be adversely effected.

Id. Those same principals adhere to the no-fault law. For a great number of individuals injured in minor automobile accidents, the damages are so minor that they did not provide the incentive to bring a claim to the legal system. Instead, the costs of those claims were imposed upon an injured party or an already burdened society. The Utah no-fault laws pay any claim, no matter how small.

Numerous constitutional challenges have been brought against no-fault acts in their twenty years of existence. The great majority of courts have upheld the no-fault acts under both due process and equal protection analyses.³ See Bushnell v. Sapp, 571 P.2d 1100 (Colo. 1977); Gentile v. Altermatt, 363 A.2d 1 (Conn. 1976); Chapman v. Dillon, 414 So.2d 12 (Fla. 1982); Lasky v. State Farm Ins., 296 So.2d 9 (Fla. 1974); Teasley v. Mathis, 255 S.E.2d 57 (Ga. 1979); Williams v. Kennedy, 240 S.E.2d 51 (Ga. 1977); Manzanares v. Bell, 522 P.2d 1291 (Kan. 1974); Fann v. McGuffey, 534 S.W.2d 730 (Ky. 1976); Pinnick v. Cleary, 271 N.E. 2d 592 (Mass. 1971); Moore v. Austin, 251 N.W.2d 564 (Mich. 1977); Shavers v. Attorney General of

³"Different courts have used different rationales to support their holdings of constitutionality. Most uphold the limitation on the right to sue in return for guaranteed payment of no-fault benefits because the guaranteed payment is 'a reasonable alternative to a tort action.'"U.S. Dep't of Transportation, Compensating an Auto Accident Victim: A Follow-Up Report on No-Fault Auto Insurance Experiences, 146 (1985).

Michigan, 237 N.W.2d 325 (Mich. Ct. App. 1975); Opinion of the Justices, 304 A.2d 881 (N.H. 1973); Rybeck v. Rybeck, 358 A.2d 828 (N.J. Super.), appeal dismissed, 375 A.2d 269 (N.J. 1976); Montgomery v. Daniels, 378 N.Y.2d 1 (N.Y. 1975); Singer v. Shephard, 346 A.2d 897 (Pa. 1975); Wheeler v. Travelers Insurance Company, 22 F.3d 534 (3rd Cir. 1994) (upheld New Jersey no-fault threshold under the fourteenth amendment).

This court too will find that upon closer examination the Utah no-fault statute passes constitutional muster both under state due process and the equal protection analysis.

I. THE PURPOSES OF THE NO-FAULT STATUTE HAVE BEEN MET

Utah's no-fault insurance law provides first party compensation, enabling an injured party to obtain prompt recompense for his or her most serious financial needs, without bearing the expense and lengthy delay associated with litigation to establish fault. In return for the disallowance of general damages, a tort victim is given immediate payment of medical expenses and economic loss. The Utah no-fault insurance laws have no effect whatsoever on this plaintiff's, or any other person's, ability to completely recover their pecuniary losses. The Utah no-fault insurance law is a legislative realization that minor injury cases involve little in the way of non-economic detriment, and that the injured party is better compensated by immediate payment of first party benefits. It is the aggregate of benefits that clearly falls within the ambit of a reasonable alternative, and therefore, as a threshold matter, this court should note that the

plaintiff has singled out one small facet, that is general damages in cases of minor injuries, from the complete remedy available to persons suffering personal injuries in automobile accidents.

A. Plaintiff Has Admitted That Some Of The Purposes Have Been Achieved

It is important to note what the plaintiff admitted below. “Plaintiff does not contend that the subject legislation fails to address any legitimate concerns.” (R. 84). “The direct benefit coverage provisions of the no-fault statutes have resulted in a laudable improvement in [the expedited payment of certain pecuniary losses] especially for those with limited resources who would otherwise be unable to meet their immediate needs.” (R. 85). Lastly, “Plaintiff concedes that he has not demonstrated, as did the court in Malan v. Lewis, that the statute is ‘so shot through with exceptions as to be incapable of’ effectively stabilizing or even reducing the cost of liability insurance. Indeed, it would be difficult to conceive of a method which would have a greater potential capacity for reducing the cost of insurance than [the no-fault insurance laws].” (R. 99).

As stated, Plaintiff has isolated a single component in a vast array of items of compensation which make up the total remedy which a tort victim in an automobile accident case may potentially recover. To claim that Utah’s no-fault laws rob a potential plaintiff of a recovery is to read the statute myopically. Such a narrow reading of the statute is most probably attributable to a misperception. Because the legislature has intervened and established a threshold, it is conceivable that the public, plaintiffs, and counsel often assume that a substantial

limit has been put on recovery. However, as this case makes clear, and as the statute is written, the statute effects only general damages in the cases of minor injury.

Plaintiff below claimed that he has received no benefit in exchange for the loss of his common law claim for lost wages, based upon the misperception that because the plaintiff had recovered some of his lost wages under a workers' compensation policy, he could not receive any further benefits under no-fault. (R. 80). Apparently, Plaintiff had simply not applied for lost wages under his no-fault policy. Utah's no-fault system does not rob the plaintiff of the ability to sue the defendant for lost wages. Utah Code Ann. § 31A-22-309(1) only bars actions for general damages. Accordingly, any lost wages in excess of no-fault benefits may be recovered in an action for special damages. Additionally, any difference between the benefits which were paid to the plaintiff under Workers' Compensation and no-fault are likewise recoverable under no-fault. Specifically, Utah Code Ann. § 31A-22-309(3) provides:

The benefits payable to an injured person under § 31A-22-307 are reduced by:
(a) any benefits which that person receives or is entitled to receive as a result of an accident covered in this code under any workers' compensation or similar statutory plan.

Thus, no-fault benefits are reduced, not replaced, by workers' compensation. Thus, if Plaintiff has received worker's compensation benefits, and the time to make an application for further no-fault benefits is not expired, Plaintiff is currently at liberty to apply for the difference between workers' compensation and the no-fault benefits. The benefit the plaintiff receives is a direct result of Utah's no-fault statute in that the no-fault benefits will be paid immediately. The

plaintiff will not need to await a resolution of a liability suit. Most importantly, these benefits are available to all injured parties, regardless of fault.

Apparently the plaintiff is now convinced that his arguments regarding lost wages were without merit, for they have been dropped from his brief on appeal. Instead, as will be hereafter discussed, the plaintiff has erected new straw men to topple in an effort to show the unconstitutionality of the no-fault laws.

Among these arguments are extensive analysis taken from or attributable to an educated guess at the Utah Supreme Court's review of a hypothetical statute in a law review note.⁴ Plaintiff even quotes the note as to fixed statutory recoveries which do not exist under Utah's no-fault law. See Plaintiff's Brief at 25. Plaintiffs under the law are not limited to fixed statutory recoveries. Plaintiff even asserts that:

A "remedy" which provides only partial reimbursement of one's pecuniary losses and no compensation for his general damages does not provide "substantive protection" comparable to that provided by the common law.

Plaintiff's Brief at 29. Any claim of "partial reimbursement" of pecuniary losses once again ignores the actual statute. If the statutory no-fault amounts do not make plaintiff's pecuniary losses whole, 31A-22-309(1) in no way precludes plaintiff from bringing an action for those losses.

⁴Brent J. Giaque, No-Fault Automobile Insurance in Utah -- State Constitutional Issues, 1970 Utah L.Rev. 248.

B. The Available Evidence Shows That The Utah Legislature Acted Reasonably And Deliberately In Passing Utah's No-Fault Legislation And That The Legislation Has Achieved Its Purpose⁵

Professor Keeton characterized Utah's no-fault law as follows:

The medical threshold provisions of the Utah Statute are better designed than those of most other No-fault laws to operate evenhandedly in the face of variations and charges for similar medical services in different communities, or by different doctors or hospitals within the single community.⁶

In 1985, a U.S. Department of Transportation study (hereinafter "DOT study") (R. 145-149) showed: approximately twice as many accident victims are compensated under No-fault than under traditional tort systems; practically all no-fault payments are made within one year of injury, over 95%, as opposed to only half of tort awards; and average benefits under no-fault are 79% greater.⁷ Research has shown that no-fault systems reduce the transactions costs, legal fees

⁵While the U.S. Department of Transportation studies of 1971 and 1985 are part of the record below, See R.145-149, many of the studies proffered by both the plaintiff and the defendant are not part of the record. "It is legitimate for a court to consider legislative facts without being restricted in any way by the rules of evidence. Utah R. Evid. 201 advisory committee's note." Cruz v. Middlekauf Lincoln-Mercury, Inc., 909 P.2d 1259 (Utah 1996) (concurring opinion of Chief Justice Zimmerman). "Judicial notice of [legislative facts] occurs when a judge is faced with the task of creating law, by deciding upon the constitutional validity of a statute, . . . and the policy is thought to hinge upon social, economic, political or scientific facts." McCormick on Evidence, § 328, at 386, Vol. II (4th ed. 1992).

⁶Robert E. Keeton, Compensation Systems and Utah's No-fault statute, 1973 Utah L. Rev. 383, 391.

⁷U.S. Department of Transportation, Compensating an Auto Accident Victims: A Follow-Up Report on No-fault Auto Insurance Experiences, 3, 4, 6, 113-17 (1985). See also All Industry Research Counsel, Compensation for Automobile Injuries in the United States, (1989).

and claims processing costs significantly.⁸ No-fault plans substantially increase the proportion of claimants who are fully compensated for their economic losses.⁹ The Rand Institute has shown that where no-fault coverage exists, claimants are less likely to submit excess claims.¹⁰ And lastly, where claims have been made that no-fault subverts personal responsibility and accountability, two studies have found such an assertion to be completely untrue.¹¹

The DOT study showed specifically as to Utah that a 13% savings in insurance premiums had been realized. The study further showed that in Utah approximately twice as many no-fault claims were made than traditional claims, thus showing that the no-fault statute handles the greater bulk of automobile cases as the legislature intended.¹² No-fault is more efficient because it engenders proper rehabilitation.

No-fault auto insurance does more for rehabilitation of auto accident victims than traditional auto insurance. No-fault, unlike traditional insurance, makes available to

⁸Stephen J. Carroll and James S. Kakalic, No-fault Approaches to Compensating Auto Accident Victims, The Journal of Risk and Insurance, Vol. 60, Num. 2, 265-287 (1993). (No-fault plans reduce transaction costs by approximately 39%).

⁹Id. at 280.

¹⁰Stephen J. Carroll, Allan Abrahamse, Mary Vaiana, The Costs of Excess Medical Plans for Automobile Personal Injuries, RAND: The Institute for Civil Justice (1995).

¹¹Paul S. Kochanowski and Madelyn V. Young, Deterrent Aspects of No-fault Automobile Insurance: Some Imperial Findings, 52 Journal of Risk and Insurance 286 (1985); Paul Zador and Adrian Lund, Re-Analysis of the Effects of No-fault Auto Insurance on Fatal Crashes, 53 Journal of Risk and Insurance 234 (1986).

¹²DOT Study at 40.

victims a significant amount of money immediately after an accident. This timely and guaranteed availability of benefits may be . . . the most important contribution of no-fault to rehabilitation, because rehabilitation may not be effective unless a treatment program is started almost immediately after the accident.¹³

Of course, without no-fault, the inefficient traditional tort system burdens society with the unrehabilitated tort claimant.

All of these factors highlight that no-fault laws serve a vital and important purpose in a modern society where the automobile has become such an intricate part of living.

II. THE CORRECT STANDARD OF REVIEW MUST BE APPLIED

The standard of review to be applied to questions regarding constitutionally protected rights appears clear, but requires explanation nonetheless.¹⁴ Both in addressing the

¹³DOT Study at 107. “Finally, it should be recognized that the delays so frequently encountered in settling personal injury litigation tend to keep the patient trapped for months, even years, in a limbo of indecision and idleness in which dependency needs are fostered. During this time it frequently becomes so pointless to try to work toward rehabilitation that, practically, the patient remains an invalid until legal elements emanating from his injury are resolved.” Nemiah, Psychological Aspects of the Injured, 7 TRIAL 61, 62 (April/May 1971).

¹⁴Plaintiff has drawn the court’s attention to a number of statements, primarily found in concurring opinions of Chief Justice Zimmerman of the Utah Supreme Court, that the burden is upon the proponent of legislation to show the validity and constitutionality of a statute where constitutionally protected rights are involved. See Plaintiff’s Brief at 31. Chief Justice Zimmerman would have the normal presumption of constitutionality reversed. See Lee v. Gaufin, 867 P.d. 572, 580 (1993); Horton v. Goldminers Daughter, 786 P.d. 1087, 1096 (Utah 1989); Condemarin v. University Hospital, 775 P.d. 348, 363 (Utah 1989); Berry v. Beech Aircraft Corp., 717 P.d. 670, 681-83 (Utah 1985). However, to date Justice Zimmerman’s position has not been adopted by the remainder of the court. Thus, under the doctrine of stare decisis, this court is compelled to follow the long recognized presumption of constitutionality which applies to any statute enacted by the legislature of this state.

constitutionality of a statute under due process (Article I, sections 7, 11) or equal protection (Article I, section 24), the court should apply a “careful scrutiny” or “realistic rational basis” review to the statute. The justices of the Utah Supreme Court have described this review in a number of ways. In Condemarin v. University Hospital, 775 P.2d 348 (Utah 1989), Justice Zimmerman wrote:

[W]e should give the legislation and its justifications careful scrutiny to assure that redress of legally cognizable injuries is not unreasonably impaired.

Id. Justice Zimmerman went on to explain:

I do not suggest that we should strike down any such legislation if a less restrictive alternative is conceivable as might be required under a “fundamental rights” equal protection analysis. Rather, I agree with the approach taken in Berry of weighing the particular infringement on the Article I, section 11 interest at issue against the justifications offered for the restriction (citation omitted). This balancing process may not be as apparently neat and precise as the rigid equal protection classification tests that have developed under the federal Constitution, but it is an approach better calculated to recognize the realities that the legislature must face in attempting to deal with perceived social and economic problems.

Id. In both the case of due process and equal protection analysis, the Utah Supreme Court has not simply told the lower courts to apply a standard of realistic rational or careful scrutiny review; instead, the court has identified specific tests to be applied to the questions of constitutionality of statutes. These tests should not be confused with federal strict scrutiny.

In recognizing the legislature’s prerogative in relation to compensation for personal injuries, the law of workers’ compensation must be reviewed, as a finding of unconstitutionality in the present matter would suggest a conclusion that the workers’ compensation laws are

unconstitutional as well. This court cannot brush aside the parallels between the Utah No-fault Insurance Act and the Workers' Compensation Act as easily as the plaintiff would wish. The Workers' Compensation Act is, in reality, a no-fault law. The Utah Supreme Court recently characterized the Workers' Compensation Act as follows:

The Act basically creates a no-fault type insurance protection scheme for work related injuries in lieu of traditional common law tort remedies.

Scheppick v. Albertsons, Inc., 297 Utah Adv. Rep. 11 (Utah Supreme Court, August 13, 1996).

The court went on to note:

Although in some cases, the amount of compensation a worker can receive under the act is more limited than the worker might receive in common law damages, the compensation is available without regard to fault, is more flexible in providing for physical disabilities and loss of wages, medical benefits, and benefits for dependants and survivors, and is provided more speedily and generally with less expense.

Id. at 12. The same can be said for the Utah No-fault Insurance Act. As has been and will be pointed out many times in this brief, the Utah No-fault Insurance Act only effects general damages. Out-of-pocket expenses are in no way effected, as they are in some situations under the Workers' Compensation Act. The Utah No-fault Insurance Act provides for compensation without regard to fault and provides this compensation more speedily and generally with less expense.

As this court held in Wrolstad v. Industrial Com'n of Utah, 786 P.2d 243 (Utah Ct. App. 1990):

The legislature clearly has power to alter the form of or to limit [a plaintiff's] compensation for his disease. However, to satisfy the open courts provision, the legislature cannot effectively preclude all compensation without providing an equivalent alternative remedy.

In this case, that is exactly what the legislature has done. The legislature has only slightly altered the form of the remedy, and also slightly limited the compensation for the injury. But at the same time, the legislature has provided additional benefits so that the remedy is substantially the same, although the form is different.

III. UTAH CODE ANN. § 31A-22-309(1) PASSES CONSTITUTIONAL MUSTER WHEN APPLIED TO ARTICLE I, SECTION 24 OF THE UTAH CONSTITUTION

Utah Constitution Article I, section 24 provides: "All laws of a general nature shall have uniform operation." In reviewing the constitutionality of a statute under Article I, section 24, the test for review applicable to this case is found in Lee v. Gaufin, 867 P.2d 572, 582 (Utah 1983). "In sum and in elaboration of the above, we hold that a statutory classification that discriminates against a person's constitutional right to a remedy for personal injury under Article I, section 11, is constitutional only if it (1) is reasonable, (2) has more than a speculative tendency to further the legislative objective, and in fact, actually and substantially further the valid legislative purpose, and (3) is reasonably necessary to further a legitimate legislative goal."

Thus, prior to applying the Lee test, this court must first conclude that the statute discriminates against a constitutionally protected right in its operation. As the plaintiff recognizes:

In the event the court should determine that the No-fault statute provided substitute remedy which is “substantially equal in value or other benefit” to the remedy which is abrogated thereby, the legislation will not be subject to further review on a “due process” level. Moreover, such a determination would apparently destroy any basis for applying “heightened scrutiny,” under a state equal protection analysis because the persons within the class would enjoy substantive protection substantially equal to that enjoyed by those who do not fall within the statutory classification. The statutory classification established by the No-fault threshold would still be subject to review but only under a “rational basis” standard which it would almost certainly survive.

Plaintiff’s Brief at 24-25. The court in Lee recognized:

All laws, either explicitly by their terms or implicitly by exclusion from the scope of the law, create legal classifications. Justice Wolfe stated in State v. Mason, 94 Utah 501, 507, 78 P.2d 920, 923 (1938):

Of course, every legislative act is in one sense discriminatory. The legislature cannot in one act legislate as to all persons or all subject matters. It is inclusive as to some class or group and as to some human relationships, transactions, or functions and exclusions as to the remainder. For that reason, to be unconstitutional the discrimination must be unreasonable or arbitrary. A classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for the differentiation between classes or subject matters included as compared to those excluded from its operation, provided the differentiation bears reasonable relation to the purposes to be accomplished by the act.

Id. at 577 n. 6. Utah’s no-fault law is reasonable in the way it separates the claims of persons injured in automobile accidents into two categories, serious and less serious injuries. Under Utah’s no-fault law, persons similarly situated are treated similarly and persons in different circumstances are not treated as though they were the same. By including both a “verbal” as well as a monetary threshold, the Utah Legislature conscientiously divided claims between serious and less serious injuries.

To some extent, plaintiff has admitted the subject legislation is reasonable. In fact, Plaintiff himself characterized the legislation as “laudable.” “Plaintiff does not contend that the subject legislation fails to address any legitimate concerns.” (R. 84). “The direct benefit coverage provisions of the No-fault statutes have resulted in the laudable improvement in [the expedited payment of pecuniary losses] especially for those with limited resources who would otherwise be unable to meet their immediate needs.” (R. 85). Thus, Plaintiff has admitted that the subject legislation has more than a speculative tendency to further the legislative objective of expediting claims. In fact, the plaintiff has admitted that the legislation actually and substantially furthers this valid legislative purpose.

Utah’s no-fault statute separates claims of injured persons into two categories, serious and minor injuries. The legislature’s determination of what constitutes serious injury was not arbitrarily made, as is evident by a careful reading of § 31A-22-309(1) which provides:

A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (a) death;
- (b) dismemberment;
- (c) permanent disability or permanent impairment based upon objective findings;
- (d) permanent disfigurement; or
- (e) medical expenses to a person in excess of \$3,000.00.

In drawing the classifications of serious and minor injuries, it was necessary for the legislature to draw the lines somewhere. As Justice Holmes wrote:

[W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 41(1928).

It is helpful to note the plethora of injuries which would justify a general damage claim forward under the No-fault statute. Basically, these encompass all serious injuries. Dismemberment, permanent disfigurement such as scars, and any permanent disability or impairment brings one over the threshold. This impairment can be quite minimal. If a plaintiff who has been in an automobile accident experiences intermittent muscle guarding which is observed by a physician, or nonuniform loss of range of motion, or even nonverifiable radicular complaints, a physician may assign a 5% whole-person impairment rating. See Guide to the Evaluation of Permanent Impairment, American Medical Association (4th ed. 1993).

Utah's no-fault threshold is not arbitrary nor unreasonable. The thresholds identify any long lasting injury. Monetary thresholds in 1982 varied in the United States from \$200.00 in New Jersey to \$5,000.00 in the District of Columbia.¹⁵ Presently, Hawaii's no-fault monetary threshold is \$10,000.00.¹⁶ Of course, if a threshold is too low it accomplishes nothing. The DOT study concluded that the \$500.00 threshold in Georgia was too low to significantly reduce bodily injury claims. It is also generally recognized that periodic increases in the dollar threshold

¹⁵DOT study at 23.

¹⁶Haw. Rev. Stat. § 431:10C-306 (1987, as amended).

are required to retain the benefit of the threshold. Perhaps \$3,000.00 is not the perfect number. But perfection is not required. In the final analysis, a \$3,000.00 monetary threshold is not “very wide of any reasonable mark.”

Numerous states have addressed equal protection concerns and whether no-fault remedies are reasonable. In all of the following cases, the courts held that the no-fault laws did not violate equal protection principles: Pinnick v. Cleary, 271 N.E. 2d 592 (Mass. 1971); Gentile v. Altermatt, 363 A.2d 1 (Conn. 1976); Williams v. Kennedy, 240 S.E. 2d 51 (Ga. 1977); Manzanares v. Bell, 522 P.2d 1291 (Kan. 1974); Montgomery v. Daniels, 340 N.E. 2d 444 (N.Y. 1975). In each of these cases, the legislation at issue differentiated between serious and minor injuries. The court in Manzanares, supra, wrote as to equal protection and classifications:

Equal protection principals do not restrain the normal exercise of governmental power, but only abuse in the exertion of such authority. The principal of equal protection is not offended against simply because the exercise of the power may result in some inequity. Louisville & National Railroad v. Milton, 218 U.S. 36 (1910). There is no precise application of the rule of reasonableness in classifying, and equality permits many practical inequalities. There need not be an exact exclusion or inclusion of persons and things. Magaun v. Illinois Trust & Savings Bank, 170 U.S. 283 (1898). The state enjoys a wide range of discretion in distinguishing, selecting, and classifying, and it is sufficient if a classification is practical and not palpably arbitrary. Orion Ins. Co. v. Daggs, 172 U.S. 557 (1899).

As has already been stated, a cursory review of 31A-22-309(1) shows that the legislature’s determination of what constitutes a serious injury was not arbitrarily made.

The plaintiff has attempted to show through the findings of Brian A. Smith, research manager, Alliance of American Insurers, in an article Reexamining the Cost Benefit of No-fault,

Charter Property and Casualty Underwriters Journal, March 1989 at 28 that the No-fault statute has not been cost effective. It should be noted that the report which plaintiff cites indicates that in 1982 the difference between the pure premium cost of the package of no-fault insurance in Utah as compared to a standard automobile package produced a savings of 13%. This same report, using numbers collected in 1987 shows that, for example, in Minnesota where the threshold is \$4,000.00 a pure premium savings of 19% was realized. Plaintiff accurately cites the fact that in 1987 it appeared that Utah's no-fault statute appeared to produce a difference in the pure premium on 3.4% more than the estimated pure premium costs of a comparable standard automobile liability policy. A finding of constitutional infirmity should hardly rest on these numbers. In fact, in reviewing the whole of Mr. Smith's research, the research exhibits that the statute substantially effectuated its purpose.

First, Mr. Smith's calculations are merely estimates. Second, if the data shows anything, it is that by enactment of no-fault statutes, the legislative intention of possibly stabilizing insurance costs or effectuating savings has been effectuated. Mr. Smith's research shows that in the period during the no-fault act's enactment, from 1973 and 1987, Utah experienced an average savings of 10% in pure premium. Indeed, in 1982 a 13% savings was actually realized in Utah, thus substantially effectuating one of the goals of the Utah Legislature. Additionally, it should be noted that a possible savings in premium was only one of three identified legislative objectives. The more concrete legislative objectives which the statute does effectuate are (1) the

creation of a more efficient and equitable method of handling the greater bulk of personal injury claims as well as (2) a legislative program to encourage compliance with the security provisions of the motor vehicle financial responsibility act.

The effect on courts is great. Whereas even minor general damage claims can take years to litigate and days to try, under Utah's No-fault Insurance laws claims are handled quickly, efficiently, and equitably. The plaintiff has simply failed to show that the statute operates inequitably among persons injured in automobile accidents. The plaintiff has failed to show that the statute is unreasonable and it does not effect the purposes it set out to. The equitable effect of the no-fault insurance laws cannot be understated. As in the case of workmens' compensation, the Utah no-fault act provides for no reduction for comparative negligence. Prior to its enactment, any defendant could argue that the out-of-pocket expenses of a plaintiff must be reduced due to comparative negligence. However, under the no-fault act, comparative negligence is not applicable to the majority of claims for special damages. With the foregoing facts in mind, the classification of the legislature differentiating between serious and minor injuries is reasonable. Any injury which is of significance is specifically exempted from the operation of the no-fault statutes's bar on general damages. The legislature intended to create a system which would enable an injured person to obtain relief for "out-of-pocket" damages on an expedited basis. The no-fault statute is a reasonable way to effectuate this purpose.

The second factor this court must look at is whether the legislative objective was legitimate. The legislative intent of the Utah Automobile No-fault Insurance Act was identified by the Utah Supreme Court in Allstate Ins.. Co. v. Ivie, 606 P.2d 1197 (Utah 1980). The statute itself, as originally enacted, announced its intention as follows:

The intention of the legislature is hereby to possibly stabilize, if not effectuate certain savings in the rising cost of automobile accident insurance and to effectuate a more efficient, equatable method of handling the greater bulk of personal injury claims that arise out of automobile accidents. These being those not involving great amounts of damages.

Id. at 1203. The main opinion in Ivie also recognized that by coupling the no-fault statute with the Motor Vehicle Financial Responsibility Act, “the obvious legislative intent was to encourage compliance with the security provisions of the act.” Id. at 1200. All three of these legislative objectives are legitimate. This court can recognize the inherent need in a society such as ours to encourage compliance with the security requirements of the motor vehicle financial responsibility act. In fact, operating a motor vehicle without insurance is a crime. See Utah Code Ann. § 41-12a-302. By enactment of the no-fault statute, an additional incentive was established to prompt those not currently carrying insurance to go out and get it.

The effect of automobile accidents on the people of Utah, and on the nation as a whole, cannot be overlooked.

In 1982, 1,269,00 people suffered motor-vehicle-accident-related injuries for which they were taken to a medical facility. Of this number, 156,000 were seriously injured and 43,945 died. One-third of all motor vehicle accident victims were 15 to 24 years of age, and more than an additional one-fifth were 25 to 34 years of age. A large number of

these youthful victims did not have a comprehensive health insurance plan or more than the minimum required amount of auto insurance.

Personal injury auto insurance is the major single source, although not the only source, from which motor vehicle accident victims recover compensation for the losses they suffer as a result of motor vehicle accidents. Society gives recognition to its importance by the fact that every State requires or strongly encourages the purchase of auto insurance through compulsory or financial responsibility laws.

DOT Study at 1.

The general populace benefits from a more efficient and equitable method of handling the greater bulk of personal injury claims. Utah's no-fault insurance law provides first party compensation enabling an injured party to obtain prompt recompense for the most serious financial needs without bearing the expense and lengthy delay associated with litigation to establish fault. Individual injured persons benefit from a more efficient, equitable method of handling the greater bulk of personal injury claims. This fact was borne out by the DOT study.¹⁷ The DOT study found that approximately twice as many accident victims are compensated under no-fault than under liability policies and that practically all no-fault payments are made within one year of injury as opposed to only half of regular tort awards. Even more compelling in support of the constitutionality of Utah's no-fault statute, is the finding by the Department of Transportation that the average benefits collected under no-fault are 79% greater than traditional tort recoveries. Id. One only need look at the no-fault statute and compare it with normal

¹⁷U.S. Department of Transportation, Compensating Auto Accident Victims: A Follow-up Report on No-fault Auto Insurance Experiences, 3 ,4 ,6 , 113-187 (1985).

litigation to arrive at the conclusion that the no-fault statute on its face and in its operation is more efficient at handling the greater bulk of personal injury claims that do not involve great amounts of damage.

An insurer under the no-fault statute has 30 days after proof of loss is received to pay the claim. If the insurer does not pay the claim within that time, the injured party is entitled to interest at the rate of 1 ½ %, and attorneys' fees which might be incurred in forcing the insurer to pay the benefits. Such attorneys' fees would not be available in a normal tort context at common law.¹⁸

As a result, the no-fault statute has in fact expanded the rights available to injured persons. In contrast to this expedited system of compensation, if one were to file a complaint and submit a single set of interrogatories, those interrogatories would not have to be answered for 45 days. See Rule 33 of the Utah Rules of Civil Procedure. Additionally, in most courts of this state, a trial could not be had on the matter for some months, even years. In the meantime, the injured party would not have these bills paid and would be subject to collection efforts by medical providers. No reduction of comparative fault is made. Lost wages are promptly received so that the injured party may meet his obligations. Under the no-fault statute, where

¹⁸Utah law has long held that attorneys' fees are not recoverable where no statutory or contractual authority for those fees exist, such as tort actions. Debry and Hilton Travel v. Capitol Airways, 583 P.2d 1181, 1185 (Utah 1978); Collier v. Heinze, 827 P.2d 982, 983 (Utah Ct. App. 1992).

fault is irrelevant vis-a-vie the injured party, claims are liquidated quickly, efficiently, and thus more equitably.

By offering the benefits which the no-fault statute provides, a reasonable relationship exists between the classification the legislature has drawn between the serious and less serious injuries in automobile accidents, and the legislative objectives. The legislation does in fact achieve its purposes. As a result, all of the elements of the Lee test are met. On its face and in its operation, the Utah no-fault law operates uniformly. Accordingly, the no-fault statute passes constitutional muster under Utah Constitution Article I, section 24.

IV. UTAH'S NO-FAULT STATUTE WITHSTANDS DUE PROCESS ANALYSIS, INCLUDING THE OPEN COURT PROVISION

As Plaintiff pointed out, Article I, section 11 of the Utah Constitution is an extension of the Due Process Clause, Article I, section 7. Berry v. Beech Aircraft Corp., 717 P.2d 670 (Utah 1985) remains the leading case in due process analysis where constitutionally protected rights are at issue. The holding in Berry is clear in providing for a two part analysis.

We hold that section 11 of the declaration of rights and the prerogative of the legislature are properly accommodated by applying a two part analysis. First, section 11 is satisfied if the law provides an injured person an effective and reasonable alternative remedy "by due course of law" for vindication of his constitutional interest. The benefit provided by the substitute must be substantially equal in value or other benefit to the remedy abrogated in providing essentially comparable substantive protection to one's person, property or reputation, although the form of the substitute may be different.

...

Second, if there is no substitute or alternative remedy provided, abrogation of the remedy or cause of action may be justified only if there is a clear social or economic evil to be

eliminated and the elimination of an existing legal remedy is not an arbitrary or unreasonable means for achieving the objective.

Id. at 680.

In applying the two part test to the present case, it is important to look at comments made in the Berry decision. For example, the court in Berry stated:

We do not mean to say, however, that Section 11 requires only a judicial remedy for the protection of “person, property or reputation.” The term “due course of law” may permit non-judicial type remedies in lieu of judicial remedies as long as other constitutional provisions are not violated and the remedy provided is reasonable and equitable.

Id. at 675 n.1. Further, the law in this state, as it is elsewhere, is that “no one has a vested right in any rule of law under either open courts or the due process provisions of the Utah Constitution.” Id. at 675. The Berry court noted that neither the due process nor the open courts provision constitutionalizes the common law or otherwise freezes it as at the time of statehood. In addressing the issue of reasonable alternative remedies, the Berry court itself cited the Workmen’ Compensation Act, the Occupational Disease Act, and most notably the Utah No-fault Automobile Insurance Act as examples of statutes which provided an insurance remedy in lieu of a common law remedy. Berry, 717 P.2d at 677. See also Condemarin v. University Hospital, 775 P.2d 348, 359 (Utah 1989); Sun Valley Water Beds of Utah v. Herm Hughes & Sons, Inc., 782 P.2d 188, 192 (Utah 1989).

Like Utah, the Supreme Court of Connecticut recognized that its open courts provision required a reasonable alternative, but not an exact equation of remedies.

Thus for each remedy or item of damage existing under the prior fault system, it is not required that that item be duplicated under the act but that the bulk of remedies under the act be of such significance that a court is justified in viewing this legislation on the whole as a substitute, the benefits from which are sufficient to tolerate the removal of the prior cause of action.

...

It is this aggregate of benefits to the insured that clearly falls within the ambit of reasonable alternative.

Gentile v. Altermatt, 363 A.2d 1, 15 (Conn. 1976). Therefore, while limiting recovery for the non-exempted plaintiff, the act further assures to each insured that when he is placed in the role of tortfeasor he is granted immunity from suit to the extent that his victim is in the non-exempted category.

The true character of Article I, section 11 was summarized by the Utah Supreme Court in Berry as follows:

In sum, Section 11 does not recede before every legislative enactment, but neither may be applied in a mechanical fashion to strike every statute with which there may be a conflict. To hold every statute of repose unconstitutional without regard to the legislative purpose could result in the legislative inability to cope with wide spread social or economic evils.

Berry, 717 P.2d at 680.

In commenting on Article I, section 11, particularly the Berry decision, Justice Zimmerman in his concurring opinion in Condemarin v. University Hospital, 775 P.2d 348, 368 (Utah 1989) wrote:

I do not suggest that we should strike down any such legislation if a less restrictive alternative is conceivable, as might be required by “fundamental rights” equal protection analysis [federal equal protection]. Rather, I agree with the approach taken in Berry of

weighing the particular infringement on the Article I, section 11 interest at issue against the justifications offered for the restriction. Berry, 717 P.2d at 680, 683. This balancing process may not be as apparently neat and precise as the rigid equal protection classifications tests that have developed under the federal Constitution, but it is an approach better calculated to recognize the realities that a legislature must face in attempting to deal with perceived social and economic problems

Condemarin involved a question concerning the statutes which imposed a limit on the amount a person could claim against an uninsured government entity. In the Condemarin case, it appeared that due to the cap, which by the decision was declared unconstitutional, the plaintiff would not even be able to recover actual out-of-pocket losses. Justice Zimmerman, commented further in regards to Article I, section 11 in the context of the Condemarin facts:

Returning to the present case, there could be no question that the legislation at issue, which severely restricts the right of every citizen to recover even actual out-of-pocket losses, both from a narrow category of health care providers who are the actual malefactors and from their governmental employer, substantially infringes upon those interests specifically protected by Article I, section 11. See Berry, 717 P.2d at 676 and n. 3.

...

In my view, when the people are deprived of a right to actual out-of-pocket expenditures that have been or will be incurred because of the tortious conduct of another, the infringement upon the right to recover for harm to a person is far more severe and requires far more justification than when general damages for pain and suffering or punitive damages are restricted.

Id. at 369. Justice Zimmerman's comments are most telling. The no-fault statute does not interfere in any way with a tort victim's collection of out-of-pocket expenditures. Thus, Utah's no-fault statute satisfies Article I, section 11 on the first part of the Berry two part analysis alone. As the plaintiff recognizes:

In the event the court should determine that the no-fault statute provides a substitute remedy which is “substantially equal in value or other benefit” to the remedy which is abrogated thereby, the legislation will not be subject to further review on a “due process” level. Moreover, such a determination would apparently destroy any basis for applying “heightened scrutiny,” under a state equal protection analysis because the persons within the class would enjoy substantive protection substantially equal to that enjoyed by those who do not fall within the statutory classification. The statutory classification established by the No-fault threshold would still be subject to review but only under a “rational basis” standard which it would almost certainly survive.¹⁹

Plaintiff’s Brief at 24-25. Since the injured person is given an effective and reasonable alternative remedy, the statute is constitutional.

Again, many states have addressed whether no-fault statutes provide a reasonable alternative remedy. Gentile v. Altermatt, 363 A.2d 1 (Conn. 1975); Lasky v. State Farm, 296 So.2d 9 (Fla. 1974); Manzanares v. Bell, 522 P.2d 1291 (Kan . 1974); Pinnick v. Cleary, 271 N.E.2d 592 (Mass. 1971). In every one of these cases, the court found that the no-fault statute was a reasonable alternative. Of course, the exact nature of the remedy may have been changed, but the aggregate of benefits clearly falls within the ambit of reasonable alternative.

In construing the Kansas no-fault statute, the Kansas Supreme Court recognized:

Moreover, the Kansas No-Fault Act assures all motor vehicle accident victims of prompt, efficient payment of certain economic losses. To the extent there is a limitation on a person’s ability to recover non-pecuniary damages, the rights received are no less adequate.

¹⁹As has previously been explained, the standard of review of strict scrutiny does not apply in the present matter. The plaintiff concedes that the No-fault threshold would survive a rational basis review.

Manzanares, 522 P.2d at 1301.

It is important for this court to note that all the Utah cases cited by the plaintiff which hold statutes unconstitutional under the open court provision involve the total abolition of any remedy, with the exception of Condemarin v. University Hospital, 775 P.2d 348 (Utah 1989). See Lee v. Gaufin, 867 P.2d 572 (Utah 1993) (medical malpractice statute of repose totally abrogated remedy); Berry v. Beech Aircraft, 717 P.2d 670 (Utah 1985) (products liability statute of repose abrogated any remedy); Malan v. Lewis, 693 P.2d 661 (Utah 1984) (guest statute abrogated entire remedy). In the single exception, Condemarin, the governmental immunity cap of \$100,000.00 regarding medical malpractice claims was found unconstitutional as applied to the facts of Condemarin because it limited even economic and pecuniary, or out-of-pocket, damages. As a result, although these cases are clearly controlling and offer a frame work in which this courts analysis should be founded, these cases do not provide precedent for finding the no-fault insurance laws unconstitutional.

In this case, in contrast to those cases which have found previous laws in the State of Utah unconstitutional under the open courts provision, only one small facet of a remedy has been replaced. No out-of-pocket or economic damages are taken from the plaintiff in this case. It is true that the form of the substitute is different. However, the Berry court itself noted that the form of a remedy may be different in that the form does not necessarily need to include a judicial remedy. Berry, 717 P.2d at 675 n. 1. The Utah no-fault statute passes muster because not only

does it substitute an alternate remedy, but the abrogation of any single element of the common law remedy is justifiable because of the social and economic evils which are overcome by enactment of the no-fault statute.

As heretofore pointed out, two of the main reasons the no-fault statute was enacted were to create a more efficient process through which the great majority of personal injury claims could be liquidated, and to provide an incentive for persons to obtain motor vehicle insurance to drive on the highways of the State of Utah. The social and economic evils in this case are the same. Clogged courts and uninsured drivers are costly to society, both economically and otherwise.²⁰ By removing a great number of minor automobile accident claims from the courts and providing a non-judicial remedy, the courts are free to address other needs of society such as the spheres of criminal law, commercial law, domestic law, and serious injury cases. Likewise, this court can appreciate the need to compel and induce the citizens of the State of Utah to purchase insurance. The uninsured driver is surely a social and economic evil to be dealt with. The legislature's use of the no-fault statute as an incentive is neither arbitrary nor unreasonable.

Because the Utah no-fault laws provide a substitute remedy which is substantial in value or other benefit to the common law remedy for personal injury in a minor automobile accident, the legislation is not subject to further review under Berry. Nonetheless, even if the court were

²⁰No-fault has led to a reduction in the number of lawsuits and, thus, to significant savings in court and other public legal costs. Each jury tort trial costs the taxpayer approximately \$8,300. DOT study at 5.

to look at whether the abrogation is justified, the legislature has eliminated a clear social and economic evil by reducing the number of claims in the courts and providing the incentive to reduce the number of uninsured drivers on the roads. Accordingly, Utah's no-fault insurance laws withstand Plaintiff's due process challenge under Article I, sections 7 and 11.

V. UTAH'S NO FAULT LAWS ARE REASONABLE AND EQUITABLE

As previously explained, there exists a common misperception that the Utah's no-fault laws have robbed a plaintiff of a significant amount of damages previously recoverable at common law. However, a thorough reading of Utah Code Ann. § 31A-22-309 provides that no special damages have been effected. Only general damages in minor injury claims have been eliminated, and it is questionable whether such damages would be significant in any event.

Below the plaintiff claimed that the Utah no-fault system destroyed personal accountability in the operation of motor vehicles upon the State of Utah. Plaintiff makes this same argument on appeal. Plaintiff claims that the insurance benefits and coverage offered by Utah's no-fault statute have nothing to do with interpersonal relationship or individual rights and that vindication can no longer be part of the social equation. Plaintiff claims that because of a lack of personal accountability, the no-fault statute will not make persons responsible to live up to a standard of reasonable care. This assertion lacks merit.²¹

²¹It is an acknowledged fact that the exposure to the risk of tort liability in a common law setting did not function as a significant factor in motivating drivers to operate their vehicles carefully or prudently. See United States Department of Transportation Report prepared at the

First, the no-fault statute does not do away with personal accountability. Under the no-fault statute, one is still liable under normal fault analysis for property damage. Even the smallest automobile accident involves property damage. Likewise, when one is involved in an accident, one has no idea whether a potential plaintiff is going to come under the tort threshold or not. It is conceivable that a normal lawsuit will arise out of any collision. The operator of any motor vehicle must be concerned with coming into contact with an "eggshell" plaintiff. Additionally, Utah Code Ann. § 31A-22-309 has no effect whatsoever on punitive damages. Therefore, personal accountability for acts such as drunk driving remain wholly intact.

Defendant will concede that Plaintiff's desire for retribution and revenge has been replaced and a pound of flesh is no longer available. However, Plaintiff's assertion that personal accountability is sacrificed by the no-fault act has no basis whatsoever in fact as empirical data proves. One study showed "no evidence in support of the claim that no-fault insurance laws restricting general liability have led to increased fatal crashes in the United States." Abstract, Paul Zador and Adrian Lund, Reanalysis of the Effects of No-fault Auto Insurance on Fatal Crashes, 53 Journal of Risk in Insurance 234 (1986). A second study indicated:

The results indicate that fears of a dramatic escalation of fatal accidents because of no-fault insurance are unfounded. Even on a theoretical basis such fears have weak underpinnings. On an empirical basis, they appear to have no foundation whatsoever.

Request of Congress, Motor Vehicle Crash Losses and Compensation in the United States (1971); Report of the New York State Department of Insurance, Automobile Insurance . . . for Whose Benefit? (1970); Keeton and O'Connell, Basic Protection for the Traffic Victim (1965).

Abstract, Paul S. Kochanowski and Madeline B. Young, Deterrent Aspects of No-fault Automobile Insurance: Some Imparical Findings, 52 Journal of Risk in Insurance 286 (1985).

The concept of fault is retained in the No-fault Act, but a determination of who is at fault is determined by arbitration between the insurers. The benefit which the plaintiff in this case has already received is that the benefits were immediately forthcoming, not dependant on this determination of fault.

Plaintiff's arguments as to the arbitrariness of the no-fault statute are likewise without merit. Plaintiff seems to want to ignore the "verbal thresholds" which allow persons to continue with their tort claims when their medical expenses are less than \$3,000.00. Those "verbal thresholds" include dismemberment, disability, and permanent impairment. In fact, Plaintiff's assertion that "the difference between having a common law cause of action and having no cause of action at all may be a function of nothing more than the distance from the site of the accident to the hospital if the injured party is transported by ambulance" highlights that the threshold is really not that high.²² In short, the plaintiff cannot show in any way that the statute operates unreasonably, arbitrarily, or unequally as applied to him. Instead, the plaintiff must search for hopeless hypothetical situations in order to support his position.

For example, throughout Plaintiff's brief, Plaintiff cites either as support, or takes aim at the American Insurance Association's model "Personal and Property Protection Motor Vehicle

²²Plaintiff Brief at 42.

Insurance Act.” The problem with the plaintiff’s analysis in this case, is that Utah did not enact the AIA plan. For example, the AIA plan provides for no-fault property damage insurance. The AIA plan likewise provides for no verbal thresholds like the Utah statute. Plaintiff relies on a 1970 law review note which is really an educated guess at the actions of the Utah Supreme Court in reviewing an act which the Utah Legislature did not promulgate.²³ In retrospect, many of the assertions in the note are very wide of the mark. To finish the quote which the plaintiff cites in his brief at 16:

On its face, [Article I, section 11] would appear to invalidate the AIA plan because the plan denies an injured party to a right of action for pain and suffering, **for permanent impairment and disfigurement, for damage to motor vehicles, and for damage to other exempted personal property when such injuries are inflicted by a party who has proper personal and property protection insurance. . . .**

Plaintiff’s Brief at 16 (emphasis added). As the quote shows, the author of the note assumed that the constitutional review would include a plan which denies an injured party a right of action for permanent impairment or disfigurement and property damage. In short, the law review note does not discuss the present statute.

Lastly, the plaintiff attempts to show the act as incongruent with other rules of law, none of which are applicable to the present case. First, Plaintiff attempts to show that the no-fault law is somehow in conflict with Johnson v. Rogers, 763 P.2d 771 (Utah 1988). Plaintiff himself recognizes, and a cursory reading of the decision clearly shows, that the applicability of the no-

²³See supra note 4.

fault act is not addressed at all. The Johnson court's discussion of punitive damages is of course in no way effected by the no-fault act. Since Johnson v. Rogers does not discuss in any way the no-fault act, there cannot be claimed any conflict between that decision and the present act. Likewise, Reeves v. Gentile, 813 P.2d 111 (Utah 1991), in no way discusses the no-fault act. The issue simply was not before the court in Reeves, and therefore no conflict can be found.


CONCLUSION

In summary, Utah's no-fault insurance law is reasonable and has more than a speculative tendency to further the legislative objective of expediting minor automobile accident injury cases, reducing insurance premiums, and creating an incentive to purchase compulsory insurance. Likewise, Utah's No-fault insurance laws provide a reasonable alternative to the common law remedy which was available prior to its enactment. The Legislature's classification is not arbitrary nor unreasonable. The objectives of the legislature have been realized. As a result, the Utah no-fault insurance laws are constitutional under Article I, sections 7, 11, and 24 of the Utah Constitution. While the plaintiff may have identified one or two minor and irrelevant flaws in the no-fault system, plaintiff has wholly failed to carry his burden of proving the unconstitutionality of the Utah no-fault laws. As the court in Manzanares, *supra*, pointed out:

[T]o be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations. . . . What is best is not always discernable; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to . . . judicial review. . . .

Manzanares, 522 P.2d 1291, 1310 (Kan. 1974) (quoting Metropolis Theater Co. v. Chicago, 228 U.S. 61, 69, 70, 33 S. Ct. 441, 443, 57 L. Ed. 730, 734 (1918)). The Utah no-fault law is constitutional. Therefore, the judgment of the district court should be affirmed.

DATED AND SIGNED this 14th day of November, 1996.

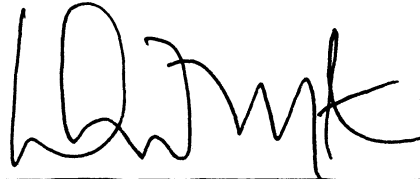


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MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing Brief of Appellee with postage prepaid thereon this 14th day of November, 1996, to the following:

Gary W. Pendleton
150 North 200 East, Suite 202
St. George, Utah 84770

A handwritten signature in black ink, appearing to read 'DMYK', written over a horizontal line.

DAVID N. MORTENSEN
IVIE & YOUNG

ADDENDUM A

Utah Const. Art. I, Section 7.

No person shall be deprived of life, liberty or property, without due process of law.

Utah Const. Art. I, Section 11.

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Utah Const. Art. I, Section 24.

All laws of a general nature shall have uniform operation.

Utah Code Ann. Section 31A-22-309(1).

(1) A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (a) death;
- (b) dismemberment;
- (c) permanent disability or permanent impairment based upon objective findings;
- (d) permanent disfigurement; or
- (e) medical expenses to a person in excess of \$3,000.00.