

1988

Michael H. McCaffery v. Terry Raymond Grow : Brief of Respondent

Utah Court of Appeals

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Recommended Citation

Brief of Respondent, *McCaffery v. Grow*, No. 880566 (Utah Court of Appeals, 1988).
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DOCKET NO.

880566

~~IN THE~~ UTAH COURT OF APPEALS

Respondent.

Civil No. 880566-CA
Argument Priority
Classification: 14(b)

FILED

DEC 27 1988

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

MICHAEL H. McCAFFERY, as)	
personal representative for and)	BRIEF OF RESPONDENT
on behalf of CHRISTOPHER M.)	STATE FARM MUTUAL
McCAFFERY, deceased,)	AUTOMOBILE INSURANCE
)	COMPANY
Plaintiff/Appellant,)	
)	
vs.)	
)	
TERRY RAYMOND GROW, as personal)	Civil No. 880566-CA
representative of RODNEY V.)	Argument Priority
GROW, deceased, PAT GROW,)	Classification: 14(b)
individually, and STATE FARM)	
MUTUAL AUTOMOBILE INSURANCE)	
COMPANY,)	
)	
Defendants,)	
)	
STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Respondent.)	
)	

APPEAL FROM CROSS-MOTIONS FOR SUMMARY JUDGMENT
IN THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH,
HONORABLE JAMES S. SAWAYA PRESIDING

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LIST OF ALL PARTIES TO THIS APPEAL

MICHAEL H. McCAFFERY, as personal representative for and on behalf of CHRISTOPHER M. McCAFFERY, deceased,

Appellant

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent

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JURISDICTION

Jurisdiction is conferred on the Utah Court of Appeals pursuant to Utah Code Ann. § 78-2a-3(2)(j) (1988 Supp.) and Rule 4A of the Rules of the Utah Court of Appeals.

NATURE OF PROCEEDINGS

This case involves a tragic automobile accident which occurred on 27 August 1986 in East Canyon. Rodney Grow, the driver of the vehicle, age 17, and his two passengers, Michael Quintana and Christopher McCaffery, ages 16 and 18 respectively, were all fatally injured when the vehicle in which they were traveling left the road and collided with a tree. The vehicle impacted the tree at an estimated 90 m.p.h.

The automobile was owned by Michael Morris and uninsured at the time.

Christopher McCaffery's father brought suit against Terry Grow, the personal representative of Rodney Grow, Pat Grow, Rodney's mother, since she had signed his driver's license application, and State Farm Mutual Automobile Insurance Company, the Grow's automobile insurer.

State Farm moved for summary judgment on the ground that Pat Grow and Rodney Grow were not entitled to liability coverage as Rodney Grow was driving Michael Morris' vehicle without his permission and on the additional ground that Christopher

McCaffery was not entitled to PIP benefits because he was not occupying Rodney Grow's vehicle at the time of the accident but rather was occupying Michael Morris' vehicle. Before arguments could be heard on the motion, State Farm settled the liability claim with the McCafferys but refused to settle the PIP claim. The court subsequently granted State Farm's motion with respect to PIP coverage and this appeal followed.

ISSUE PRESENTED ON APPEAL

Is Christopher McCaffery entitled to PIP benefits from Rodney Grow's policy even though Christopher was not riding in Rodney's vehicle at the time of the accident?

DETERMINATIVE STATUTE

Utah Code Ann. § 31A-22-308, reproduced in the text.

STATEMENT OF FACTS

Although the facts are undisputed in this case, see page 2 of plaintiff's memorandum of points and authorities in opposition to State Farm's motion for summary judgment (R-099), State Farm wishes to add the following facts for purposes of clarity and completeness:

1. On 27 August 1986, a group of teenagers from Taylorsville High were attending a drinking party, depositions of Michael Jendrycka, pages 19-21; Jeremy Hardman, page 11; and Shawn Martinez, page 19, near Affleck Park, approximately four miles up East Canyon. It was their "last summer fling." Deposition of Lyle Robinson, page 11. The youth were consuming "[q]uite a bit" of Wyoming beer, and a beer bong was being used by Christopher ("Chris") McCaffery for purposes of consuming large quantities of beer in a matter of seconds. Depositions of Michael Jendrycka, pages 20-23; and Shawn Martinez, pages 64-65.

2. Rodney Grow got into a fight with his girlfriend and became upset and started to drive his red 1976 Mustang II up and down the canyon road. Depositions of Michael Morris, pages 46-48; Shawn Martinez, page 34; and Michael Jendrycka, pages 23-25. Rodney was "driving like an idiot . . . a hellion[,] " deposition of Michael Jendrycka, page 25, "lock[ing] up the brakes[,] " id., "spinning around and doing doughnuts in the dirt[,] " deposition of Michael Morris, page 47.

3. Michael Jendrycka observed Rodney driving his Mustang II up and down the canyon road and got into the car with him. Deposition of Michael Jendrycka, page 24. They drove up and down the canyon road a few more times then parked the red Mustang II near Michael Morris' 1967 dark blue and primer gray Mustang. Id. at 26 & 28.

4. Meanwhile, Michael Morris and a few of his friends had gone to Parley's Summit for a bite to eat. Id. at 28 and

deposition of Michael Morris, pages 18-19. He rode with a friend and left his vehicle parked by the roadside. It was unlocked but he took his keys with him in his pocket. Deposition of Michael Morris, pages 19-21.

5. After parking the red Mustang II, Rodney and Michael Jendrycka got out, grabbed a couple of beers, then went back to where the cars were parked to talk. Deposition of Michael Jendrycka, page 26.

6. Michael Jendrycka sat on the trunk of Michael Morris' 1967 dark blue and primer gray Mustang, and Rodney Grow opened the unlocked door and sat sideways on the driver's seat with his feet hanging out of the car. Id. at 26 & 28.

7. They talked about girls and cars, then "out of the blue" Rodney tried the key to his 1976 red Mustang II in the ignition of Morris' vehicle, and it fit. Id.

8. Rodney then said, "Let's go for a ride," and Michael Jendrycka responded, "All right. Let me drive." Id. at 27.

9. (Michael Jendrycka was a friend of Michael Morris, but Rodney was only an acquaintance. Deposition of Michael Morris, pages 14 & 21-22.)

10. Rodney wanted to go "for a spin in a fast car." Deposition of Michael Jendrycka, page 50. (The Morris vehicle could travel as fast as 130 m.p.h.)

11. Rodney and Michael Jendrycka then took turns driving Michael Morris' car up and down the canyon road. Id. at 27 & 30-31. They did not have his permission to do so. Depositions of

Shawn Martinez, pages 70-71; Jeremy Hardman, page 41; Trooper John Graber, pages 55, 76-77, 89-91; Michael Jendrycka, pages 11-12, 29-30, 55-56; and Michael Morris, pages 14, 20, 29-30, 54-55, 67, 71, 80-81, 82.

12. A short time later they parked the car because it was beginning to overheat. Deposition of Michael Jendrycka, page 31.

13. Sometime thereafter Rodney got back into the car, along with Michael Quintana and Christopher McCaffery. Id. at 34-38. There were initially four passengers in the car, but two of the teenagers had gotten out when they discovered that Rodney Grow, who had been drinking, would be driving. Depositions of Shawn Martinez, page 62; Jeremy Hardman, page 27; and Lyle Robinson, page 28.

14. Rodney and his passengers then drove a few miles up the canyon, turned around, and proceeded back down. As they neared the campsite where the party was located, they were traveling at a very high rate of speed (104 - 111 m.p.h.), lost control of the vehicle, and collided into a tree. The accident was fatal for all three occupants in the car. See generally deposition of Trooper John Graber, exhibit A.

15. The Morris vehicle was uninsured at the time of the accident. Deposition of Michael Morris, page 11.

16. Rodney Grow and his mother, who had signed his driver's license application, were insureds of State Farm at the time of the accident. Their policies contained both liability coverage

and personal injury protection coverage. See copy of policy attached to appellant's brief (R-071).

17. State Farm sought to deny liability coverage on the ground that Rodney was operating a non-owned car without the permission of its owner. See State Farm's memorandum in support of summary judgment (R-047).

18. State Farm later settled the liability claim by paying \$25,000, policy limits, to the personal representative of Chris McCaffery (R-211).

19. State Farm continues to deny PIP benefits on the ground that Chris McCaffery was not occupying Rodney Grow's vehicle at the time of the accident but was rather occupying Michael Morris' vehicle.

SUMMARY OF ARGUMENTS

The non-owned car exclusion has nothing to do with whether or not Chris McCaffery is entitled to PIP benefits. The non-owned car exclusion is found in the liability section of Rodney Grow's policy and was relied upon by State Farm in denying liability coverage to the Grows, but that part of the case has settled and the non-owned car exclusion is no longer at issue. The issue on appeal is whether or not Chris McCaffery is entitled to PIP benefits even though he was occupying Michael Morris' vehicle at the time of the accident and not Rodney Grow's vehicle. This issue should be resolved in favor of State Farm

since the Insurance Code and case law clearly state that PIP benefits can only be afforded to Chris McCaffery if he was an occupant in Rodney Grow's vehicle at the time of the accident.

ARGUMENT

POINT I

CHRIS McCAFFERY IS ENTITLED TO PIP BENEFITS FROM HIS OWN INSURER, ASSUMING HE WAS INSURED, BUT NOT FROM STATE FARM. PLAINTIFF HAS CONFUSED LIABILITY COVERAGE WITH PIP COVERAGE.

Plaintiff is confused. State Farm relied on the non-owned car exclusion to deny liability coverage to the Grows. It did not rely on the non-owned car exclusion to deny PIP benefits to Chris McCaffery. The non-owned car exclusion appears in the liability section of the policy. See page 5 of the policy and the definition of a "Non-Owned Car" on page 2 of the policy. The non-owned car exclusion does not even appear in Section II of the policy dealing with PIP benefits.

State Farm denied PIP benefits on the ground that Chris McCaffery was not occupying Rodney Grow's vehicle at the time of the accident but was rather occupying Michael Morris' vehicle. See letter attached hereto in the addendum. An insured for purposes of personal injury protection coverage is defined as follows on page 8 of the policy:

Insured -- means:

1. you, your spouse or any relative:
 - a. while occupying a motor vehicle; or
 - b. when a pedestrian, if the bodily injury results from physical contact with a motor vehicle or motorcycle; or
 - c. when occupying a motorcycle, if the bodily injury results from physical contact with a motor vehicle; and
2. any other person:
 - a. while occupying your car or a newly acquired car with the permission of:
 - (1) you, your spouse, any relative;
or
 - (2) the person driving such car
with your permission; or
 - b. when struck as a pedestrian by your car or a newly acquired car.

The second provision applies to Chris McCaffery since he was not a relative of Rodney Grow. Provision 2. states that Chris McCaffery is only entitled to PIP benefits if he was occupying "your car." "Your Car" is defined on page 3 of the policy as follows:

Your Car -- means the car or the vehicle described on the declarations page.

The vehicle described on the declarations page of the policy is Rodney Grow's 1976 two-door Mustang. (The declarations page appears at the very front of the policy.) Since Chris McCaffery was not occupying Rodney Grow's vehicle at the time of the accident, State Farm denied PIP benefits. The non-owned car

exclusion had nothing to do with denying PIP benefits to Chris McCaffery. The non-owned car exclusion was however relied upon in denying liability coverage to the Grow's. But that part of the case has been settled and is no longer at issue. The issue involved herein is whether the definition of "insured" for purposes of personal injury protection coverage violates the motor vehicle provisions of the new Insurance Code. It does not. The language of Rodney Grow's policy patterns that of the Insurance Code.

Section 31A-22-308 describes those persons who are entitled to PIP benefits:

31A-22-308. Persons covered by personal injury protection.

The following may receive benefits under personal injury protection coverage:

(1) the named insured and persons related to the insured by blood, marriage, adoption, or guardianship who are residents of the insured's household, including those who usually make their home in the same household but temporarily live elsewhere, when injured in an accident in Utah involving any motor vehicle; and

(2) any other natural person whose injuries arise out of an automobile accident occurring in Utah while the person occupies a motor vehicle described in the policy with the express or implied consent of the named insured or while a pedestrian if he is injured in an accident involving the described motor vehicle.

(Emphasis added.) Section (2) of the statute applies, again because Chris McCaffery was not a relative of Rodney Grow. Like the policy, section (2) states that Chris McCaffery is only

entitled to PIP benefits when occupying the "motor vehicle described in the policy." As previously indicated, the motor vehicle described in Rodney Grow's policy is a 1976 two-door Mustang. Since Chris McCaffery was not occupying Rodney Grow's vehicle at the time of the accident but was rather occupying Michael Morris' uninsured vehicle, Chris McCaffery is not entitled to PIP benefits. However, Chris McCaffery is entitled to PIP benefits under his own policy of insurance, assuming he was insured, or the policy of his parents, since in that case section (1) of the statute would apply, i.e., Chris McCaffery would be the named insured or a relative of the named insured, and section (1) applies to "any motor vehicle," not just to those vehicles described on the declarations page of the policy.

Therefore, assuming Chris McCaffery or his parents had purchased a policy of insurance, there are no gaps in the no-fault coverage; Chris' injuries and death will be compensated. However, if the McCafferys were uninsured, they have no one to blame but themselves.

Two cases are on point; one is from Utah and the other is from Florida. In Osuala v. Aetna Life & Cas., 608 P.2d 242 (Utah 1980) plaintiff Oscar Osuala, an uninsured motorist, collided with the rear of a truck driven by Clark Olson and owned by Olson Construction Co. Plaintiff brought suit against Aetna Life

& Casualty, the construction company's insurer, seeking PIP benefits.

The court was called upon to construe § 31-41-7, the predecessor of § 31A-22-308. The statutes are substantially similar. Section 31-41-7 reads as follows:

(1) The coverages described in section 31-41-6 shall be applicable to:

(a) Personal injuries sustained by the insured in an accident in this state involving any motor vehicle.

(b) Personal injuries arising out of automobile accidents occurring in this state sustained by any other natural person while occupying the described motor vehicle with the consent of the insured or while a pedestrian if injured in an accident involving the described motor vehicle.

The court held that since plaintiff was not occupying the described motor vehicle (i.e., the truck) at the time of the accident, he was not entitled to PIP benefits. The court then added:

In regard to the plaintiff's urgence that the no-fault law is intended to provide coverage for others who might be injured as a result of an automobile accident, it is pertinent to observe that he himself has not met that requirement, because he was driving without insurance. An important aspect of the Act is the requirement that the PIP protections for an injured motorist are to be paid by his own insurer. To permit the plaintiff to violate the Act, and nevertheless insist upon compensation from the other motorist's insurer, regardless of fault, would reward him for his wrong, and would tend to defeat the purposes of the Act.

Id. at 243-44. Summary judgment was affirmed in favor of Aetna.

Protective National Ins. Co. of Omaha v. Padron, 310 So.2d 432 (Fla. App. 1975) is squarely on point. Plaintiff, who was uninsured, was the passenger in an uninsured vehicle. The

driver of the vehicle, however, was insured. Plaintiff was injured in a collision and sought PIP benefits from the driver's policy. The driver's policy read as follows:

PERSONAL INJURY PROTECTION

The Company will pay, in accordance with the Florida Automobile Reparations Reform Act, to or for the benefit of the injured person:

(a) all reasonable medical expenses, and

(b) . . .

(c) . . . expenses, incurred as a result of bodily injury, caused by an accident arising out of the ownership, maintenance or use of a motor vehicle and sustained by:

(1) the named insured or any relative while occupying a motor vehicle or, while a pedestrian, through being struck by a motor vehicle; or

(2) any other person while occupying the insured motor vehicle or, while a pedestrian, through being struck by the insured motor vehicle.

Id. at 433. The court stated as follows:

The passenger contends that the phrase "arising out of . . . use of a motor vehicle" should be construed so as to grant her coverage. This construction is not supported by the terms of the policy or the Florida Automobile Reparations Reform (No Fault) Act. The phrase appears in paragraph (c) of the personal injury protection provision, but it cannot be extracted and construed on its own. Considering it in the context of the entire provision, paragraphs (a) through (c) including subparagraphs (1) and (2), *supra* leads us to the conclusion that coverage is not provided for this passenger. The meaning of the provision is that expenses will be paid for bodily injury caused by an accident arising out of use of a motor vehicle and sustained by any other person while occupying the insured motor vehicle. This factual situation does not obtain in the instant case.

. . .

The No Fault Act requires that the owner of a motor vehicle have insurance, not the driver. Therefore, the injured passenger, having no insurance of her own, must look to the owner of the motor vehicle for personal injury protection benefits irrespective of negligence.

Id. at 433-34 (emphasis in original). Since the owner of the vehicle was also uninsured, plaintiff was unable to recover any insurance benefits. However, she had no one to blame but herself. Had she been insured, she could have collected PIP benefits from her own company.

PIP coverage works as follows: Assuming Michael Morris was insured and Chris McCaffery was occupying his vehicle with his permission, section (2) of 31A-22-308 would apply and Morris' insurance would be primary pursuant to § 31A-22-309(4). However, since Morris was uninsured and Chris McCaffery was occupying his vehicle without his permission, Chris McCaffery must look to section (1) of 31A-22-308 and to his own policy of insurance for secondary coverage. Rodney Grow's policy is not even involved. Rodney Grow's policy does, however, extend PIP benefits to Rodney, but it in no way extends PIP benefits to Chris. If the McCafferys were uninsured, they have no one to blame but themselves.

It is interesting to note that the other two occupants in the vehicle (Quintana and Grow) did obtain PIP benefits from their own insurers.

Plaintiff next argues that State Farm's policy is ambiguous; however, this argument is limited to the non-owned car exclusion

and, as already indicated, this exclusion was not relied upon by State Farm in denying PIP benefits. In fact, State Farm could not have relied upon this exclusion in denying PIP benefits since this exclusion appears in the liability section of the policy and not in the no-fault section of the policy. Plaintiff misperceives the issue. State Farm relied on the non-owned car exclusion in denying liability coverage to the Grows, but this exclusion has no bearing on whether or not Chris McCaffery is entitled to PIP benefits.

POINT II

PLAINTIFF HAS ALREADY SETTLED HIS LIABILITY CLAIM WITH STATE FARM.

Plaintiff's argument that Pat Grow is jointly and severally liable for Chris McCaffery's death has already been disposed of. Plaintiff settled his liability claim with Pat Grow. See RELEASE OF ALL CLAIMS and STIPULATION, MOTION AND ORDER OF DISMISSAL WITH PREJUDICE (R-211) attached hereto in the addendum. Moreover, Pat Grow's liability has nothing whatsoever to do with whether or not Chris McCaffery is entitled to PIP benefits. Pat Grow's liability is governed by the liability section of her policy, not by the no-fault section. As previously indicated, the issue of liability coverage has already been settled. The only remaining issue is PIP coverage. The case cited by plaintiff, United Services Automobile Association v. Crandall, deals with liability coverage, not PIP coverage, and is

therefore wholly inapplicable. Liability coverage and PIP coverage are two different issues.

Moreover, § 41-2-115(2) does not even apply because Rodney Grow had purchased a policy of automobile insurance which fully complied with the Financial Responsibility Act. Section 41-2-115(2) specifically states that it is qualified by § 41-2-115(3).

The sections read as follows:

(2) Any negligence or willful misconduct of a minor younger than 18 years of age when operating a motor vehicle upon a highway is imputed to the person who has signed the application of the minor for a permit or license. This person is jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct, except as provided under Subsection (3). This liability provision is an exception to any conflicting liability provisions in the code.

(3) If a minor deposits, or there is deposited on his behalf, proof of financial responsibility in respect to the operation of a motor vehicle he owns, or with respect to the operation of any motor vehicle if he does not own one, in form and in amounts as required under Chapter 12a, Title 41, Financial Responsibility of Motor Vehicle Owners and Operators Act, the division may accept the application of the minor when signed by a parent or guardian of the minor. While the proof is maintained, that person is not subject to the liability imposed under Subsection (2).

(Emphasis added.) Since Rodney Grow had purchased a policy of insurance, his liability cannot be imputed to Pat Grow. This issue is thoroughly discussed in 45 A.L.R.4th 87 § 29. Moreover, in Phillips v. Tooele City Corporation, 500 P.2d 669, 674 (Utah 1972) the court specifically held that these "statutes were designed solely to protect innocent third parties from the negligence of a minor driver by providing financial responsibility." If financial responsibility is provided, the

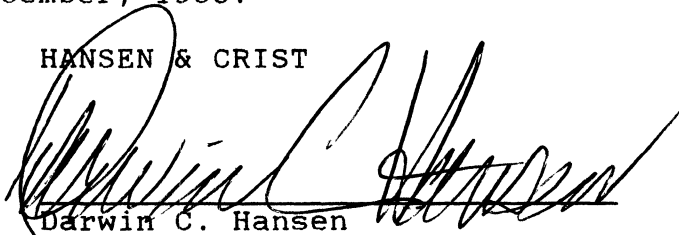
negligence of the minor cannot be imputed to the parent. This issue, however, is really irrelevant inasmuch as Pat Grow's liability has already been disposed of. Moreover, her liability has nothing to do with whether or not Chris McCaffery is entitled to PIP benefits. The PIP section and the liability section are different sections in the policy. Pat Grow's liability has nothing to do with PIP coverage.

CONCLUSION

For the foregoing reasons, the order of the lower court granting summary judgment in favor of State Farm and denying plaintiff's cross-motion for summary judgment should be affirmed.

DATED this 27 day of December, 1988.

HANSEN & CRIST



Darwin C. Hansen

John C. Hansen

Attorneys for State Farm
Mutual Automobile Insurance
Company

ADDENDUM

November 19, 1986

Mr. Mike McCaffery
5545 Edgewood Drive
Bennion, UT 84118

RE: Our Insured: Rodney Grow
Our Claim #: 44-0603-852
Date of Loss: 08-27-86

Dear Mr. McCaffery:

This is to advise you that State Farm Insurance Companies cannot extend any Personal Injury Protection Coverage on behalf of Christopher McCaffery for the accident which occurred on August 27, 1986.

Our State Farm Automobile Insurance Policy indicates that an insured, under definitions, means the insured, his spouse, or any relative while occupying a motor vehicle or any other person while occupying the insured's car or a newly-acquired car with the permission of the insured, his spouse, or any relative.

Mr. Rodney Grow was driving a vehicle registered to Mr. Michael A. Morris, as far as we know at this particular point in time.

If you have any questions in reference to this matter, please do not hesitate to call me.

Sincerely,

Felix Jensen
CLAIM SPECIALIST

FJ:m4a16

RELEASE OF ALL CLAIMS

For and in consideration of the payment to the undersigned of the total sum of Twenty-Five Thousand Dollars (\$25,000.00), the receipt of which is hereby acknowledged, the undersigned, MICHAEL H. McCAFFERY, as personal representative for and on behalf of CHRISTOPHER M. McCAFFERY, deceased, and for and on behalf of all the heirs of CHRISTOPHER M. McCAFFERY, deceased, hereby forever releases and discharges TERRY RAYMOND GROW as personal representative of RODNEY V. GROW, deceased, the Estate of RODNEY V. GROW, PAT GROW, individually, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and any and all other persons, firms, or corporations, from and of any and all claims, demands, benefits, either past or future, causes of action, damages, costs, loss of society and companionship, expenses, compensation, and damages of any kind (except those claims against STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY which are specifically reserved as set forth hereinafter), all on account of or in any way growing out of an automobile accident which occurred on or about August 27, 1986, as a result of which CHRISTOPHER M. McCAFFERY died.

The undersigned hereby declares and represents that the damages sustained by the undersigned are permanent and ongoing, and in making this release and agreement, it is understood and agreed that the undersigned relies wholly upon his own judgment, belief and knowledge of the nature, extent and duration of said damages and in granting this complete release, the undersigned does not rely upon anything told to him or represented to him by the persons, firms or corporations who are being released, or by any person or persons representing them.

Particularly, the undersigned releases the persons and companies referred to above from and of all causes of action, claims, demands, costs, expenses or compensation as set forth in that certain Amended Complaint on file in the Third Judicial District Court of Salt Lake County, State of Utah, wherein MICHAEL H. McCAFFERY, as personal representative for and on behalf of CHRISTOPHER M. McCAFFERY, deceased, is plaintiff, and TERRY RAYMOND GROW, as personal representative of RODNEY V. GROW, deceased, PAT GROW, individually, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY are defendants, Civil No. C87-1789, except for those claims expressly reserved against defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY as more particularly set forth hereunder and in the Stipulation, Motion and Order for Dismissal in the above-specified civil action.

Particularly, the undersigned releases the persons and companies referred to above from and of all causes of action, claims, demands, costs, expenses or compensations which may or could

be raised now or at any time in the future as a result of the incident referred to above, except for those claims against STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY specifically reserved hereinafter.

The undersigned understands and agrees that this settlement is a compromise of a doubtful and disputed claim and that payment is not to be construed as an admission of liability on the part of any of the persons or companies referred to above and who are released herein and by whom liability is expressly denied.

The undersigned authorizes and consents to stipulate to a dismissal with prejudice on the merits of that certain action pending in the Third Judicial District Court, which is referred to above, except for those claims against STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY which are specifically reserved hereinunder and which are also specifically reserved in the Stipulation, Motion and Order for Dismissal.

The undersigned further acknowledges and accepts the advice of counsel in the settlement of this matter and that this is a full, complete and final release (except for those claims specifically reserved against defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY) of the above-named parties for any matter or thing done or omitted to be done by the said parties and as a result of the incident referred to above. The undersigned further represents that there are no unresolved subrogation claims and agrees that if any such claims should be made, he will indemnify and save harmless those parties released hereby.

The undersigned further represents and warrants that by this Release of All Claims, he is settling all claims for the death of CHRISTOPHER M. McCAFFERY held by all heirs of the said CHRISTOPHER M. McCAFFERY, except for those claims specifically reserved against defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.

The undersigned specifically reserves his claims for no-fault insurance benefits, including claims for costs and attorney's fees arising therefrom, if any, against STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, and the undersigned further acknowledges that all defenses available to STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY with respect to such claims of the undersigned are also reserved and remain pending in litigation. Except as specifically reserved herein, the undersigned releases STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY from all other claims for damages of any kind related to and/or arising from the automobile accident of August 27, 1986 and the death of CHRISTOPHER M. McCAFFERY.


I further state that I have carefully read the foregoing Release of All Claims, know the contents thereof and that I sign the same as my own free act, and it is my intention to be legally bound thereby.

DATED this 14 day of March - , 1988.

Michael H. McCaffery -
MICHAEL H. McCAFFERY, individually,
as personal representative for and
on behalf of CHRISTOPHER M.
McCAFFERY, deceased, and as
representative of all heirs of
CHRISTOPHER M. McCAFFERY, deceased.

STATE OF UTAH)
 : ss.
County of Salt Lake)

Personally appeared before me this 14th day of March,
1988, MICHAEL H. McCAFFERY, the signer of the foregoing Release
of All Claims, who duly acknowledged to me that he executed the
same.



Notary Public

Residing at: Salt Lake County, Utah

My Commission Expires:

6-18-88

H. Dixon Hindley, Clerk 3rd Dist Court
By [Signature]
Deputy Clerk

STATE OF UTAH

Defendants.

Judge James S. Sawaya

Plaintiff, by and through counsel of record, James R. Brown and Harold L. Reiser of the law firm of Jardine, Linebaugh, Brown & Dunn; defendants Terry Raymond Grow, as personal representative of Rodney V. Grow, deceased, and Pat Grow, by and through counsel, Stuart H. Schultz of the law firm of Strong & Hanni, and Nolan J. Olsen, of the law firm of Olsen & Olsen; and defendant State Farm Mutual Automobile Insurance Company, by and through counsel of record, Darwin C. Hansen, Esq., stipulate that plaintiff's Complaint against defendants Terry Raymond Grow, as personal

...
(hereinafter Grow), and all claims contained therein and arising therefrom, have been settled, compromised, and resolved in full, and that said Complaint and all such claims against Grow may be dismissed, with prejudice, on the merits, with plaintiff and defendants Grow to bear their respective costs and fees.

The parties, through respective counsel, further stipulate that plaintiff's Complaint and claims against State Farm Mutual Automobile Insurance Company for no-fault insurance benefits, costs, and attorney's fees arising from the no-fault insurance statutory provisions of the State of Utah are hereby reserved, and that all of the defenses of State Farm Mutual Automobile Insurance Company are also hereby reserved and all such claims and defenses remain pending in this litigation.

Except as herein above specifically reserved and set forth, all other claims of plaintiff against all defendants may be dismissed, with prejudice, with the parties to bear their respective costs and fees.

The parties, through respective counsel, move the court for an Order pursuant to this stipulation.

DATED this 14th day of March, 1988.

JARDINE, LINEBAUGH, BROWN & DUNN

By 

James R. Brown

Harold L. Reiser

Attorneys for Plaintiff

DATED this 21st day of March, 1988.

STRONG & HANNI

By 

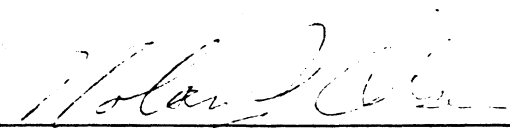
Stuart H. Schultz

Attorneys for Mr. and Mrs. Grow

DATED this 10 day of March, 1988.

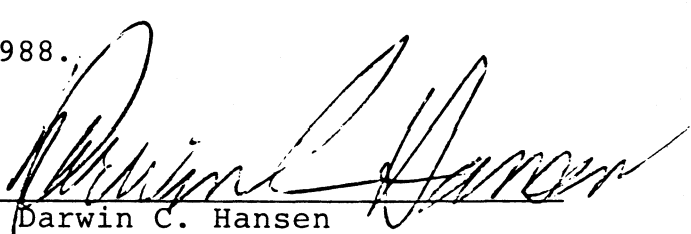
OLSEN & OLSEN

By


Nolan J. Olsen

Co-Counsel for Mr. and Mrs. Grow

DATED this 8 day of March, 1988.


Darwin C. Hansen

Attorney for State Farm Mutual
Automobile Insurance Company

ORDER

Pursuant to the stipulation and motion of the parties, through respective counsel, and good cause appearing, now, therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Plaintiff's Complaint and all claims contained therein and arising therefrom against defendants Grow have been settled, compromised, and resolved in full, and said Complaint and all such claims are hereby dismissed, with prejudice, on the merits, with the parties to bear their respective costs and fees;

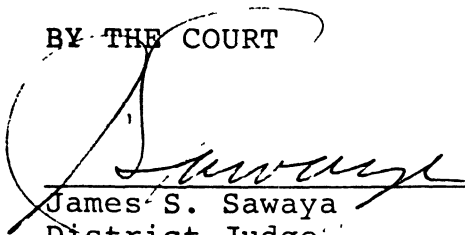
2. Plaintiff's Complaint against defendant State Farm Mutual Automobile Insurance Company for no-fault insurance benefits, costs, and attorney's fees related to such claims for no-fault insurance benefits arising out of the no-fault statute of the State of Utah, and all of defendant State Farm's defenses to such claims are reserved and remain pending in this litigation; and

3. Except as specifically reserved in paragraph 2 of this Order, all other parts of plaintiff's Complaint and all claims contained therein and arising therefrom against all defendants

are hereby dismissed, with prejudice, on the merits, with the parties to bear their respective costs and fees.

DATED this 21 day of March, 1988.

BY THE COURT


James S. Sawaya
District Judge

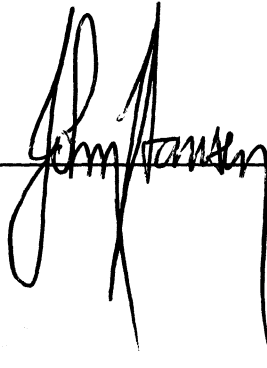
ATTEST
H. DIXON H. LEY
Clerk

By 
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that four true and correct copies of the foregoing BRIEF OF RESPONDENT were mailed by United States mail, postage prepaid, on this 27th day of December, 1988, to:

James R. Brown
Harold L. Reiser
JARDINE, LINEBAUGH, BROWN & DUNN
370 East South Temple, Suite 400
Salt Lake City, Utah 84111



A handwritten signature, likely of James R. Brown, is written over a horizontal line. The signature is stylized and cursive.