

1986

Lisa Marakis v. State Farm Fire and Casualty Company : Brief of Respondent

Utah Supreme Court

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20855

IN THE SUPREME COURT OF THE STATE OF UTAH

LISA MARAKIS,

Plaintiff-Appellant,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant-Respondent.

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Case No. 20855

BRIEF OF RESPONDENT

APPEAL FROM A SUMMARY JUDGMENT OF THE DISTRICT COURT
OF THE SEVENTH JUDICIAL DISTRICT IN AND FOR
CARBON COUNTY, STATE OF UTAH
HONORABLE BOYD BUNNELL, JUDGE

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

LISA MARAKIS,	:	
	:	
Plaintiff-Appellant,	:	
	:	
vs.	:	
	:	
STATE FARM FIRE AND CASUALTY	:	Case No. 20855
COMPANY,	:	
	:	
Defendant-Respondent.	:	

BRIEF OF RESPONDENT

ISSUE PRESENTED ON APPEAL

Respondent disputes the issue framed by appellant. Respondent respectfully submits that the issue is whether the physical contact requirement in the contract of uninsured motorist insurance between State Farm Fire and Casualty Company (respondent) and Lisa Marakis (appellant) is consistent with legislative intent and public policy of the State of Utah.

STATEMENT OF FACTS

Appellant's Statement of Facts does not refer to the record on appeal in support of numerous allegations. Respondent submits that the appellant's recitation of facts fails to accurately reflect the record presented to Judge Bunnell in the

court below. Therefore, respondent will provide the court with a Statement of Facts supported by the record.

However, one issue should be addressed at the outset. Appellant in her Statement of Facts goes to considerable lengths in describing the trial court's granting of a Rule 60(b) motion which set aside a prior order granting Marakis' motion for summary judgment. In reciting these facts to the court here, the appellant appears to criticize the attorneys for defendant as well as the court. Because no error has been assigned on this ground, respondents would ignore the allegations, but for the apparent criticism of the trial court in "surprisingly" granting respondent's motion pursuant to Rule 60(b) of the Utah Rules of Civil Procedure. In support of Judge Bunnell's ruling in this regard, it should be noted that his exercise of discretion was supported by the fact that defense counsel had not become personally aware of plaintiff's pending motion prior to the granting of the initial order and that defendant's two attorneys had tried seven multi-dayed personal injury trials during the critical six week period when the motion was pending. The court was further informed that during this period of time, counsel for both parties to this appeal were involved in a trial for several days, and that appellant's counsel declined professional comity in personally informing defense counsel of his attempts to obtain a judgment without the court being fully briefed on the issues. (Affidavits of Ray Harding Ivie and Ray Phillips Ivie, R. 85-90). The

court ruled on defendant's motion to reconsider on July 11, 1985. (R. 149-152). Defendant's lead counsel retired from the practice of law six weeks later due to health problems.

Appellant claimed coverage in the court below pursuant to a contract of insurance between her grandparents and respondent. (Findings of Fact and Conclusions of Law, R. 155-158).

The policy of insurance between appellant's grandparents and respondent provided for payment of damages for bodily injury that an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle. The policy defined uninsured motor vehicle to mean:

A 'hit-and-run' land motor vehicle whose owner or driver remains unknown and which strikes:

- a. the insured or
- b. the vehicle the insured is occupying and causes bodily injury to the insured. (emphasis added)

Appellant made claim to uninsured motorist benefits alleging that she was involved in a motor vehicle accident on or about September 4, 1982. (Plaintiff's Complaint, R. 1-3).

Appellant alleged that the accident occurred when her vehicle was forced from the road by an unidentified vehicle which the appellant further alleged left the scene of the accident. (Affidavit of Plaintiff Lisa Marakis, R. 45-46).

That the only evidence which appellant could profer as to the existence of the unidentified vehicle would be the testimony of the appellant herself. (Findings of Fact and Conclusions of Law, R. 155-158).

The respondent insurance company admits that Lisa Marakis, appellant, as a permissive user of the insured automobile is an insured pursuant to the contract of insurance.

NATURE OF THE CASE

The issue presented concerns the enforceability of the "physical contact requirement" as a condition precedent to an insurer's duty to indemnify an insured for damages sustained as the proximate result of negligence by a "hit-and-run" motorist. Appellant has never contended that the policy language is anything but clear and unequivocal in this regard. Rather, appellant seeks in this court and in the court below, to have the provision rendered unenforceable. Appellant's arguments are founded on legislative intent and public policy rationales. Therefore, the issues presented to the Supreme Court here are as follows:

1. Did the trial court correctly discern the legislature's intent in using the term "hit-and-run"; and

2. Was the trial court correct in its determination that the public policy of the State of Utah requires the courts to enforce the provision.

ARGUMENT

POINT I

THE PRESENT APPEAL IS MOOT

In the court below, Judge Bunnell was asked to determine the legislature's intent in using the phrase "hit-and-run"

in Section 41-12-21.1, Utah Code Annotated, (Utah's Uninsured Motorist Statute). At the time of Judge Bunnell's decision, the legislature had not defined the scope or breadth of that term. However, the 1986 legislature specifically addressed the physical contact rule. In so doing, the legislature clarified their legislative intent in enacting the Uninsured Motorist Statute, and adopted as the public policy of the State of Utah a rule consistent with the one applied by Judge Bunnell in the present case. The new statutory language provides:

When a covered person claims an uninsured motor vehicle under subsection (2)(b) (an unidentified motor vehicle which left the scene of an accident proximately caused by its operator) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, then the covered person shall show the existence of the other motor vehicle by clear and convincing evidence, which shall consist of more than the covered person's testimony. (Precise citation still uncertain. The above-quoted statutory language contained a working citation of 31A-22-305(5). A copy of the language as contained in Senate Bill 91 is included in respondent's brief and attached as Appendix A.)

The above-quoted statutory language is entirely consistent with Judge Bunnell's ruling in the present case. The legislature has now adopted as the public policy of the State of Utah a moderate position which balances the competing interests which are reflected in the opinions of the various states which have reviewed the physical contact requirement. The Utah statute permits recovery by an insured only where the

existence of the phantom vehicle is established by clear and convincing proof, which must consist of more than the covered person's testimony. However, the legislature had also recognized the possibility of fraud and collusion, as well as the difficulties inherent in defending actions arising out of automobile accidents involving non-contact "phantom vehicles", and of thus excluded mandatory coverage for such accidents in those instances where the existence of the phantom vehicle cannot be established by more than the covered person's testimony.

In the present case, the trial court specifically entered a finding of fact concerning this issue of proof. The court stated in paragraph 3 of the Findings of Fact:

That the only person known to plaintiff who witnessed the motor vehicle accident is the plaintiff herself. (Plaintiff's Responses to Defendant's Interrogatories, R. 25-26).

Furthermore, plaintiff-appellant was asked the following question in interrogatories:

15. Q: Please list the name, address and telephone number of each and every individual which plaintiff may or will call as a witness at the trial of this matter.

The plaintiff/appellant responded:

ANSWER: Presently, plaintiff plans to call the following people as witnesses. Names of others will be provided as they are determined:

1) Lisa Marakis, as to the facts of the accident, injuries, damages;

2) Dr. Kim Christensen, East Carbon Medical Clinic, East Carbon, UT 84520, as to injuries and damages;

3) Harold Jay Fowler, 108 8th West (Box 318) East Carbon, UT 84520, as to policy of insurance and damages and injuries;

4) Mary Fowler, 108 8th West (Box 318) East Carbon, UT 84520, as to policy of insurance and damages and injuries. (Plaintiff's Responses to Defendant's Interrogatories, R. 25-26).

As the responses to interrogatories indicate, the only person capable of testifying as to the existence of the non-contact vehicle is the plaintiff herself. The legislature has clarified the public policy underlying the Uninsured Motorist Statute in specifying that such proof will not be sufficient to establish a right to collect pursuant to a policy of insurance issued to satisfy the requirements of Utah's Uninsured Motorist Statute.

In this regard, it is interesting to note the candid observation of appellant in her brief on appeal. On page 8 of appellant's brief, she sets forth the various type of uninsured motorist statutes enacted by the several states. Appellant states therein:

The fourth, and most progressive, category consists of four states which allow the physical contact requirement to be waived if competent evidence exists to corroborate the claimant's account of the accident. (Appellant's Brief on Appeal, page 8).

State Farm does not dispute the extension of coverage to non-contact accidents where the existence of the fleeing vehicle can be sufficiently established. The physical contact requirement has been adopted not only by insurance companies in language contained in insurance contracts, but also by the legislatures or courts of the majority of states that have addressed the issue. However, the rationale behind the requirement must be examined. The purpose for requiring physical contact is not to provide an arbitrary gap in insurance coverage. Rather, it is to effectuate the public policy of stabilizing the rising costs of automobile insurance by preventing fraudulent claims as well as barring those actions which are nearly impossible to defend due to the lack of physical evidence found at the scene of the accident. However, where the existence of the phantom vehicle can be conclusively determined by evidence consisting of more than the testimony of the insured themselves, the rationale ceases to exist and coverage should be afforded.

To this extent, State Farm would agree with Marakis that a more progressive rule is emerging in the various states. While the original cases to be decided on this issue were polarized in terms of upholding the requirement or striking it down, the new moderate rule would preclude recovery in cases like the present one, but would permit claims where there is no serious question as to the presence of the non-contact accident.

In the present case, the trial court was faced with a difficult task of discerning legislative intent where the

legislature was silent as to the definition of "hit-and-run" motor vehicles. The legislature has now clarified its position and adopted a public policy consistent with the trial court's decision in the present case. The new legislative directive serves to clarify this ambiguity in a way which serves the purposes of the general public in stabilizing the rising costs of automobile insurance, while at the same time permitting recovery in those circumstances which justify it. The legislature having now spoken, and the trial court's ruling being consistent therewith, respondent would respectfully submit that the issue is now moot.

POINT II

THE PHYSICAL CONTACT REQUIREMENT CONTAINED
IN THE POLICY OF INSURANCE DOES NOT VIOLATE
PUBLIC POLICY, AND SHOULD BE ENFORCED
ACCORDING TO ITS TERMS.

While respondent maintains that the recent clarification by the Utah State Legislature has rendered the present appeal moot, the construction urged by appellant would be erroneous, even in the absence of the legislative directive.

Initially, it must be remembered that a policy of insurance constitutes a contract, which should be enforced according to its terms unless it violates state law, principles of equity, or public policy. This rule of construction was articulated by the Utah Supreme Court in a previous case concerning the Uninsured Motorist Statute, Martin v. Christensen, 454 P.2d 294 (1969). There the court stated :

There appears to be no ambiguity or uncertainty in the provision just quoted. (prohibition against stacking of uninsured motorist policies) It being thus set forth as part of the insurance contract, in clear and understandable terms . . . it is the duty of the courts to give it effect. This is true unless considerations of equity and justice, or of public policy, dictate that the contract should not be enforced because of fraud, duress, mistake, unconscionability, illegality or some other some cogent reason. (Martin v. Christensen, supra., at p. 295).

Under the standard of review enunciated in Martin v. Christensen, supra., the threshold question which must be addressed is whether or not the policy exclusion is stated clearly and unambiguously. This issue was apparently conceded by appellant in the court below. The contract language clearly requires a "hit-and-run" motor vehicle to "strike" the insured or the vehicle the insured is occupying as a condition precedent to respondent's duty to perform under the Uninsured Motorist Provision of the contract.

Appellant contends that the term "hit-and-run" as used in the Uninsured Motorist Statute is ambiguous to the extent that it does not define whether physical contact must occur to constitute a "hitting". However, while the legislature failed to define the term until the 1986 session, the term has been defined in the contract of insurance to require a "striking". No argument is issued by appellant that the definition in the contract is ambiguous. Rather, they urge that the ambiguity in the statute should be resolved in their favor and that this

court should therefore hold that the policy fails to meet the statutory directive. While the legislative intent is no longer ambiguous, State Farm maintains that the construction urged by appellant would be erroneous even in the absence of the legislative directive.

Initially, State Farm would invite the court to examine the logic of appellant's argument. Marakis maintains that Utah law concerning vehicles leaving the scene of an accident, imposes criminal responsibility without the requirement of physical contact. Marakis therefore maintains that this court should construe the Uninsured Motorist Statute to apply in the same situations which would impose criminal liability.

Respondent respectfully maintains that this logic is fallacious. An examination of the criminal statute cited by Marakis indicates that the legislature knew how to select appropriate terms in imposing legal duties based upon automobile accidents which did not involve physical contact. However, in the case of the Uninsured Motorist Statute, the legislature did not refer to Section 41-6-29, nor did the legislature use the term "involved in an accident", as they did in the criminal statute. Rather, they used the term "hit-and-run".

Respondent would respectfully maintain that the fact that the legislature selected different terms indicates that the legislature intended the two status to apply to different

situations. To this extent, it is of course important to note that the term "hit" as used in the statute carries with it an obvious implication of physical contact. The Wisconsin Supreme Court articulated this position in the case of Hayne v. Progressive Northern Ins. Co., 339 N.W.2d 588 (1983). There the court stated:

When statutory language is clear and unambiguous, we must arrive at the legislature's intention by according the language its ordinary and accepted meaning. (citation omitted) In addition, we will not resort to extrinsic aids, such as legislative history, to construe the statute when the statute is clear on its face. (citation omitted)

We conclude that the statutory language of sec. 632.32(4)(a)2b. Stats., is unambiguous. We therefore arrive at the legislature's intent by according the language its common and accepted meaning. (citation omitted) As previously noted, the common and accepted meaning of the term 'hit-and-run' includes an element of physical contact. (Hayne v. Progressive Northern Ins. Co., supra., pp. 590-591).

The Wisconsin court went on to state:

Hayne (plaintiff) nevertheless argues that the term 'hit-and-run' . . . is not synonymous with physical contact. He cites two dictionary definitions and a decision from another jurisdiction to support his assertion that hit-and-run simply means an automobile involved in an accident, after which the driver flees the accident scene.

We find his argument unpersuasive. The dictionary definitions we previously cited uniformly indicate that 'hit-and-run' includes two elements: a 'hit' or striking,

and a 'run', or fleeing from the accident scene. (Hayne v. Progressive Northern Ins. Co., supra., p. 591).

The Wisconsin court further indicated that ignoring the term "hit" would violate traditional principles of statutory construction. The court stated at page 591:

Statutes must be construed, if possible, so that no word or clause is rendered surplusage. (citation omitted) If the legislature had intended its mandated uninsured motorist coverage to apply to any accident involving an unidentified motorist, as Hayne asserts, that result could have been reached merely by deleting the term 'hit-and-run' from the language in (the statute), and having that provision read: 'an unidentified motor vehicle involved in an accident'. (Hayne v. Progressive Northern Ins. Co., supra., p. 591).

The Utah legislature has now done exactly what the Wisconsin court suggested. They have specifically defined limited class of cases which may be pursued where physical contact is absent. However, in interpreting the prior statute, the persuasive logic of the Wisconsin court remains clear. It should not be assumed that the Utah legislature used the term "hit" when they meant something else. The more persuasive argument is that if they had intended uninsured motorist coverage to apply in situations where no physical contact existed, they could have used terms such as that in the new legislative amendment, the criminal statutes cited by appellant, or the language referred to by the Wisconsin court.

Finally, the court in Hayne, supra., takes appellant's argument one step further. Not only must we assume that the legislature was aware of the language used in other statutes (and that such language could be used in the present statutes), but we may also assume that the legislature is aware of a standard policy exclusion which is contained in nearly every policy of uninsured motorist insurance. The Hayne, supra., court continued at page 595:

It is reasonable to assume that if the legislature was aware of the standard policy provision defining uninsured motor vehicle to include one involved in a 'hit-and-run' accident, it was also aware of the standard policy provision defining 'hit-and-run' to include a physical contact requirement. (Hayne v. Progressive Northern Ins. Co., supra., p. 595).

The Utah legislature's recent amendment clearly demonstrates that they are aware of the physical contact requirement, and believe that the requirement is proper except where the purpose of the requirement disappears.

Finally, Marakis maintains that the exclusion is void as against public policy. Once again, respondent would maintain that the elected representatives of the Utah citizenry have articulated Utah's public policy on this issue and the recent amendment to the statute. Furthermore, the traditional meaning of the term "hit-and-run" as used in the Uninsured Motorist Statute would indicate that the legislature previously adopted the physical contact rule as Utah's public policy. No argument

has been stated that the legislature's directives in this regard are constitutionally repugnant. State Farm would respectfully maintain that the legislature having balanced the considerations inherent in the question, and having articulated a physical contact requirement, that the court should give effect to the language.

However, State Farm would also address Marakis' characterization of the "majority rule" of our sister states on this issue. Appellant has gone to great efforts in an attempt to manufacture a majority. In doing so, Marakis has been forced to divide the statutory schemes of the various states into four categories. The appellant then identifies one category, consisting of nine states, and applies that category to Utah's legislative scheme.

Initially, it must be noted that in light of the clarification provided by the 1986 legislature, Utah no longer fits within the category assigned to it by appellant in her brief. The legislature in clarifying the statutes now places Utah within the fourth category identified by Marakis, in term the "most progressive" in appellant's brief.

However, the manufacturing of a majority by segregation into statutory categories must receive further examination. As State Farm has previously indicated, the requirement is unambiguous in its terms, and is consistent with both the Uninsured Motorist Statute and the recent amendments providing clarification concerning the physical contact requirement. Therefore,

the only remaining question is whether or not the requirement is so repugnant as to violate public policy, and under the Utah Supreme Court's standard stated in Martin v. Christensen, supra., would require the language to be ignored by the courts. In this regard, we should look beyond Marakis' categorizations of the various states. When we do this, we find that the majority of jurisdictions, either by legislative act or court determination, have embraced the physical contact requirement. Specifically, a state by state analysis shows that twenty-two states have adopted the physical contact requirement without exception. Another four states enforce the requirement except where clear and convincing corroborative evidence of the existence of the unidentified motor vehicle is present. Conversely, a minority of eighteen states permit recovery in the absence of physical contact. Only thirteen of the fifty states have permitted recovery without physical contact through judicial determination. Respondent is aware of no state court that has struck down an unambiguous legislative determination on the issue.

It is therefore clear that the majority of jurisdictions have not only found that the physical contact requirement does not violate public policy, but that indeed the requirement has been embraced as the public policy of the majority of states. Clearly then, the requirement does not reach the level of repugnance to equity and public policy referred to in Martin v. Christensen, supra.

Furthermore, while appellant has attempted to create a majority by categorizing other jurisdictions' decisions on the issue, they ignore the fact that few of the courts that have permitted recovery without physical contact have gone so far as the appellant urges the Utah court to go in this instance. Professor Alan I. Widiss in his 1985 treatise on uninsured motorist insurance, analyses the decisions requiring coverage as follows:

Appellate cases which have allowed recovery when there was no physical contact could be grouped in several categories:

- (1) Decisions that extend the indirect contact doctrine (an example of this doctrine would be rocks kicked up by the wheels of a passing motorist);
- (2) Decisions that mitigate the effect of the 'physical contact' requirement by making its satisfaction a question of fact; and
- (3) Decisions that invalidate the 'physical contact' requirement.
(A. Widiss, Uninsured and Underinsured Motorist Insurance, Section 9.6, 2nd Edition, 1985).

Therefore, in viewing the split of opinion between the various states, it is important to note that even the minority of states have in most instances refused to go to the extreme that plaintiff urges in the present case. By plaintiff's own admission, there was no "indirect contact" with the unidentified vehicle. Second, there is no "fact question" which would allow the jury to determine whether or not physical contact indeed occurred.

Because it is clear from an examination of appellant's brief that the majority of states have adopted the physical contact requirement through legislative or judicial action, respondent would refrain from excessive quotations from the statutes and case law of our sister states. However, for the benefit of the court, respondent attaches to the present brief as "Appendix B", citations to authorities in other jurisdictions which have upheld the physical contact requirement.

Finally, respondent would stress that important public policy considerations support the physical contact requirement as applied by the Utah state legislature. The legislature in several instances has indicated that it is the public policy of this state to effectuate a stabilization of automobile insurance. This court need not take judicial notice of the present "insurance crisis" which confronts the insurance consumer. That fact has been recognized by our legislature on many occasions. It is respectfully submitted that the legislature's delicate balancing has been proper in this instance. The physical contact rule will not bar claims where the existence of the unidentified vehicle can be clearly established. However, because of the possibility of fraudulent claims, but particularly the difficulties in defending actions where the only witness would be the plaintiff herself, the costs of such coverage could be expected to skyrocket. Naturally, as insurance costs increase, the number of people who elect to go without insurance would also be expected to multiply. This is

particularly so in states like Utah which permit motorists to elect not to carry uninsured motorist protection.

Obviously, it is the public policy of the State of Utah to provide insurance coverage for the innocent victims of tort feasons. However, that purpose will be frustrated if the costs of insurance protection becomes so prohibitive that more and more members of our populace are forced by economic constraints to go without insurance. Faced with such a dilemma, it is respectfully submitted that the legislature may properly exercise its function by balancing the policy favoring compensation for tort victims with the very real concern that to provide coverage for every possible instance of injury will make insurance costs so prohibitive that many citizens will be completely unprotected.

CONCLUSION

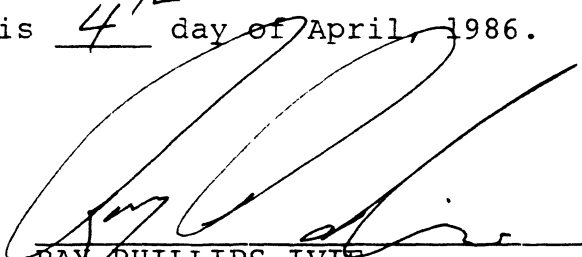
It is respectfully submitted that the trial court's determination as applied to the facts of this case is consistent with the legislative intent evidenced by the original Uninsured Motorist Statute, as well as the amendments provided by the 1986 legislature. Furthermore, respondent would contend that the legislature has balanced competing public policy concerns and has adopted as the public policy of this state a fair and rational rule which permits for indemnification and appropriate circumstances while barring those claims which threaten to place the costs of insurance beyond the means of the citizenry.

It is respectfully submitted that the trial court, correctly discerning legislative intent and rejecting an overbroad public policy argument, properly enforced the contract between the parties. The fact that this case presents a question of contracts should be of no small consequence. As the Arizona court indicated in the case of Lawrence v. Beneficial Fire & Casualty Ins. Co., 444 P.2d 446 (1968):

We find nothing misleading or ambiguous about the wording used in both policies to define 'hit-and-run automobile' or in setting out the requirement of physical contact. If we ignore or do away with the physical contact requirement we would be rewriting the contract between these parties, and would be rendering the phrase 'hit-and-run' meaningless. 'Hit' in the ordinary sense requires some 'physical contact.' If this were not the case, and if we hold that no contact is required, then we would be rewriting the policy to have it contain 'miss-and-run automobile' coverage, or 'evasive action' coverage. We cannot expand the language used beyond its plain and ordinary meaning, nor should we add something to the contract which the parties have not put there. (Lawrence v. Beneficial Fire & Casualty Ins. Co., supra., p. 449).

The trial court having properly discerned legislative intent, having properly applied the public policy of the State of Utah, and having given force and effect to the clear and unambiguous requirements of the contract, respondent would respectfully request affirmance of its order granting summary judgment.

DATED AND SIGNED this 4th day of April, 1986.



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Attorneys for Respondent

"APPENDIX A"

S. B. No. 91

(5) When a covered person claims an uninsured motor vehicle under Subsection [~~4~~] (2) (b) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, then the covered person shall show the existence of the other motor vehicle by clear and convincing evidence, which shall consist of more than the covered person's testimony.

~~[(6)--Uninsured-motorist-coverage-may-not-be-construed--to--require--an insurer,--as--to--any--one-policy,--to-pay-more-than-one-per-person-coverage limit-to-any-one-covered-person,--nor-to-pay--more--than--the--aggregate--or single-limit-coverage-limits-in-connection-with-any-one-accident.]]~~

(6) In no event shall the limit of liability for uninsured motorist coverage for two or more motor vehicles be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident. If uninsured motorist coverage is available to an injured person under more than one insurance policy, the injured person shall elect the policy under which he desires to collect uninsured motorist benefits. Claimants are not barred against making subsequent elections if recovery is unavailable under previous elections.

Section 158. Section 31A-22-306, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1985, is amended to read:

31A-22-306 (Effective 07/01/86). Personal injury protection under Subsection 31A-22-302 [~~4~~] (2) provides the coverages and benefits described under Section 31A-22-307 to persons described under Section 31A-22-308, but is subject to the limitations, exclusions, and conditions

CASES UPHOLDING PHYSICAL CONTACT REQUIREMENT

- United States. United States v. Commercial Union Insurance Group, 294 F.Supp. 768 at 777 (S.D. New York 1969).
- Arizona. Gardner v. Aetna Casualty and Surety Co., 559 P.2d 679 (1977).
- Arkansas. Ward v. Consolidated Underwriters, 535 S.W.2d 830 (1976).
- California. Rodgers v. State Farm Mutual Insurance Co., 13 Cal.App.3d 641, 91 Cal.Rptr. 678 (1970). Orpustan v. State Farm Mutual Automobile Insurance Co., 500 P.2d 1119 (1972).
- Connecticut. Roshick v. Aenta Casualty & Surety Company, 374 A.2d 1076 (1977). Weingarten v. Allstate Insurance Company, 363 A.2d 1055 (1975). Frager v. Pennsylvania General Insurance Co., 155 Conn. 270, 231 A.2d 531 (1967).
- Georgia. State Farm Mutual Automobile Ins. Co. v. Carlson, 202 S.E.2d 213 (1973).
- Illinois. Finch v. Central National Insurance Group of Omaha, 319 N.E.2d 468 (1974). Ferega v. State Farm Mutual Automobile Insurance Co., 317 N.E.2d 550 (1973).
- Indiana. Taylor v. American Underwriters, Inc., 352 N.E.2d 86 (1976). Ely v. State Farm Mutual Automobile Insurance Co., 268 N.E.2d 316 (1971).
- Iowa. Rohret v. State Farm Mutual Insurance Co., 276 N.W.2d 418 (1979).
- Kentucky. State Farm Mutual Automobile Insurance Company v. Mitchell, 553 S.W.2d 691 (1977). Jett v. John Doe and Kentucky Farm Bureau Mutual Insurance Company, 551 S.W.2d 221 (1977). Huelsman v. National Emblem Insurance Co., 551 S.W.2d 579 (1977).
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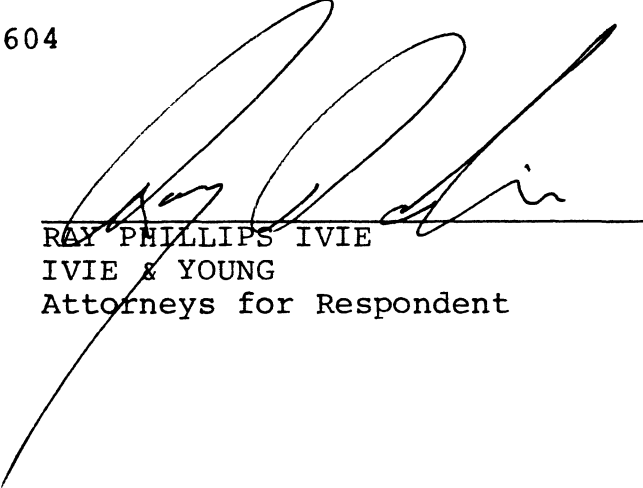
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CERTIFICATE OF SERVICE

I hereby certify that I served four (4) copies by mail of the foregoing Brief of Respondent to the following, on the 5th day of April, 1986:

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