

1986

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

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Marakis v. State Farm Company*, No. 198620855.00 (Utah Supreme Court, 1986).
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1986

IN THE SUPREME COURT OF THE STATE OF UTAH
20855

* * * * *

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

* * * * *

APPELLANT'S BRIEF ON APPEAL

* * * * *

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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JAN 31 1986

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ISSUE PRESENTED ON APPEAL

Whether an injured party's valid claim under the "hit-and-run" clause of Utah's uninsured motorist statute is barred unless there is actual contact between the vehicle occupied by the injured party and an unidentified vehicle which proximately causes the injury?

STATEMENT OF THE FACTS

On September 4, 1982 an accident occurred involving a motor vehicle insured by State Farm Fire and Casualty Company ("State Farm") and a "hit-and-run" motor vehicle. At the time the accident occurred the Appellant, Lisa Marakis ("Marakis"), was a resident of Carbon County, Utah. The Respondent, State Farm, was at the time of the accident and is at present a foreign corporation registered to do business in the state of Utah. State Farm has been licensed by the State of Utah to issue policies of insurance for motor vehicles pursuant to Utah law.

Prior to the accident, on or about March 25, 1982, State Farm issued a policy of insurance to Marakis' grandparents, Harold J. and Mary Fowler. (Record, Affidavit, Mary Fowler) That policy, No. S06 3676-C25-44, covered a 1976 Datsun--identification number HLS30288408. The Fowler's policy covered bodily injury to any of their relatives occupying the Datsun provided that the injuries arose out of the operation of the vehicle. Pursuant to statutory mandate the policy also provided for recovery in the event of a "hit-and-run" accident.

Utah's uninsured motorist statute does not define the term

"hit-and-run". However, State Farm's insurance policy includes the following in its definition of "uninsured motorist:"

2. 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.

Section III--Uninsured Motor Vehicle--Coverage U

On the fourth day of September in 1982 Marakis was driving home from work in the Fowler's Datsun. As she approached a bend in the road which curved sharply around a mountain she encountered an older model, light colored, automobile which, in attempting to negotiate the curve, crossed over to the wrong side of the road and came directly toward Marakis, traveling in her lane. To avoid the impending head-on collision Marakis was forced to hug the far right side of her lane--precariously close to the soft shoulder. As a result she began to lose control of the vehicle in the soft dirt. Marakis alertly turned to left and accelerated slightly to regain control of the vehicle. Unexpectedly, her Datsun shot across to the left side of the road and ran into a fence. The other vehicle continued on without stopping.

Marakis suffered bodily injury as a result of the negligent operation of the unidentified vehicle and the Datsun she was driving was also damaged. As a result of the impact Marakis' collar bone was broken and she suffered multiple lacerations. Consequently, it was quite some time before she was physically able to free the vehicle from its impacted position. Once the damaged vehicle was extricated,

however, Marakis immediately made her way to a phone booth and reported the "hit-and-run" accident to the Utah Highway Patrol.

Marakis made a claim against State Farm for her special and general damages on July 26, 1984, pursuant to the terms of the insurance contract. State Farm refused to pay the damages claiming that Marakis' vehicle had failed to make contact with the unidentified vehicle. According to State Farm, the absence of physical contact between the insured vehicle and the unknown vehicle precluded any claim under the insurance contract.

Marakis filed a complaint against State Farm on October 16, 1984 in the Seventh Judicial District Court of Carbon County. Two months later State Farm answered that complaint. Marakis subsequently filed a Motion for Summary Judgment based upon her own affidavit and that of her grandmother, Mary Fowler. Four notices of this motion, as well as a copy of the motion itself, were sent to State Farm's attorney. No objection or opposition to the motion was filed.

The Court entered a ruling in favor of Marakis declaring the physical contact provision of State Farm's insurance provision "void and unenforceable and against public policy." (Record, Ruling on Motion for Summary Judgment, April 30, 1985 p.1) The court entered a judgment granting Summary Judgment in favor of Marakis on May 14, 1985. Pursuant to that judgment the plaintiff requested a hearing on damages.

After notices of the hearing were issued, State Farm responded on June 1, 1985 by filing a Rule 60(b) Motion for Relief from Judgment. A motion opposing such relief was promptly filed by Marakis. State Farm claimed that due to an unspecified and undocumented clerical

error and the preoccupation of its attorneys with other cases, the four notices, as well as the standard correspondances from the court and the plaintiff, went unnoticed.

Surprisingly, the court granted State Farm's motion. State Farm then filed its own motion for Summary Judgment premised upon its policy provision limiting recovery for "hit-and-run" accidents to those instances in which there is physical contact between the insured's vehicle and the vehicle operated by an unknown "hit-and-run" motorist.

In a questionable exercise of discretion the court entirely reversed its position. The Summary Judgment granted in behalf of Marakis was vacated and Summary Judgment was entered for State Farm. The court held that "the unidentified vehicle is not a 'hit-and-run' motor vehicle within the meaning of that term as used in Section 41-12-21.1, Utah Code Annotated, or within the generally accepted meaning of the term." (Record, Judgment of July 17, 1985 p.3).

NATURE OF THE CASE

The Appellant brings this action before the Supreme Court of Utah on Appeal from a Summary Judgment entered by the Seventh Judicial District Court of Carbon County. The Appellant opposes the District Court's ruling on the physical contact requirement for "hit-and-run" accidents claiming it to be an error of law.

SUMMARY OF THE ARGUMENT

There is a lack of consensus among state courts concerning the physical contact requirement in "hit-and-run" cases. This lack of unanimity is due primarily to the fact that the courts are interpreting different statutes. Of those states with statutes which mirror Utah's Uninsured Motorist Statute the majority have rejected the physical contact requirement as contrary to the purpose of the statute. In other states, judicial decisions upholding the physical contact requirement on the basis of policies established prior to the enactment of uninsured motorist legislation are being rejected by an increasing number of courts. This emerging majority of courts choose to examine the origin and underlying purpose of uninsured motorist legislation rather than the anachronistic policies of prior statutes to guide their statutory interpretation.

Uninsured Motorist Statutes were enacted to close "gaps" in the coverage offered by insurance companies--namely the optional nature of such coverage and the contractual requirement of vehicular contact as a requisite to recovery. The prime concern of such legislation is compensation for injuries inflicted by one from whom damages cannot be recovered. State Farm's contractual requirement of physical contact reopens a gap intended to be closed by the uninsured motorist legislation and contravenes the compensatory purpose of the statute.

The term "hit-and-run" does not imply physical contact. Many courts uphold the physical contact requirement on the premise that "hit-and-run" is a synonym for physical contact. Such an interpretation ignores the contemporary usage of the term and has been rejected by a majority of the state courts.

State Farm's own insurance contract uses "hit-and-run" as a broad

term which includes both contact and noncontact accidents and accidents where the negligent motorist is known or unknown. However, the language in State Farm's contract limits coverage to those motor vehicle accidents where there is physical contact and the negligent drivers identity is unknown. If "hit-and-run" did not have such a broad meaning, the limiting language, which is to be construed strictly against the drafter, would be superfluous.

The sole justification for the vehicular contact requirement is that it provides evidence of the collision and thereby deters fraudulent claims. However, the potential cost of such evidence coupled with the probability that a collision could be fabricated and used to perpetrate a fraud renders such evidence of dubious merit. Removing the requirement of physical contact does not remove the Plaintiff's burden of proof. There are other more effective means by which the plaintiff may substantiate her claim. The plaintiff should be allowed to carry the burden of proving the authenticity of her claim using competent evidence without her claim being barred by her failure to collide with the "hit-and-run" vehicle.

Utah's criminal "hit-and-run" statute does not require physical contact as the standard for determining when one must stop and give assistance. It would be inconsistent to read such a requirement into the "hit-and-run" clause of the uninsured motorist statute.

The purpose of the uninsured motorist statute is to require insurance carriers to provide coverage for victims who are entitled to, but cannot otherwise, collect damages. Contractually requiring physical contact as a condition precedent to recovery creates an arbitrary barrier to the assertion of valid claims. Any effort to do

so is therefore void.

ARGUMENT

There is no question that an insurance company is liable when an insured motorist is injured in a vehicular collision with a negligent uninsured motorist who is liable for the damage. Each of the 50 States statutorily require that insurance carriers include uninsured motorist coverage in their automobile liability insurance policies. However, state legislatures have been less uniform in assigning liability where the legal cause of a noncontact accident is an unidentified motorist who has fled the scene. Consequently, there has been a lack of consensus among the courts of various states as to whether vehicular contact is a requisite to recovery.

While some courts have required actual physical contact between the vehicle of the insured and the "hit-and-run" vehicle as a means of avoiding fraudulent claims, others have negated the physical contact requirement on the grounds that it contravenes the compensatory purpose of the statute. The latter assert that the evidentiary function of the contact requirement is better served by other means. To understand these polar legal positions it is necessary to go beneath the surface of the judicial decisions and examine their legislative roots.

I. The Lack of Consensus Among State Courts on the Physical Contact Requirement is Attributable to the Difference in Statutes Being Interpreted. The Differences Between These Statutes Must be Considered in Interpreting Utah's Uninsured Motorist Statute.

The State Court's lack of unanimity on the "hit-and-run" contact requirement stems from differences in the statutes being interpreted.

The legislative prescription has not been uniform and several different types of Uninsured Motorist Statutes have emerged. Statutory definitions of "hit-and-run" and "uninsured motorist" differ from state to state and this difference in statutory language has resulted in conflicting decisions by the courts of different states regarding the contact requirement.

In Type One statutes, the term "hit-and-run" is included along with the term "uninsured motorist" but is not defined. Thirteen states, including Utah, fall within this category.¹ Type Two statutes include the term "uninsured motorist" but exclude the term "hit-and-run." Sixteen states have adopted this statutory language.²

The type of statute adopted by the third group explicitly defines the physical contact requirement. Three states in this group explicitly renounce any requirement of physical contact³ while the remaining twelve states presently require physical contact as a condition precedent to recovery.⁴ 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.⁵ The uninsured motorist statutes of the two remaining states are unique and not readily classifiable⁶ however, it is important to note that both of these states have rejected the requirement of physical contact as a requisite to recovery under the Uninsured Motorist Statute.

The judicial decisions of jurisdictions with Type One and Type Two statutes are relevant to the case at bar.

Of the thirteen jurisdictions with Type One Statutes (statutes like Utah's which employ but do not define the term "hit-and-run")

nine have ruled on the physical contact requirement. Of those nine, six have invalidated the requirement⁷ while only three have failed to reject it.⁸ Due to the clarity of the statutory language there has been greater harmony among the judicial decisions rendered in states with Type One statutes than among the decisions of courts interpreting other statutes.

The legislative inclusion of the term "hit-and-run" together with the exclusion of any requirement of physical contact gives the court interpretive guidance in that it manifests a deliberate attempt to close all of the "gaps" in uninsured motorist coverage. Those courts which have rejected the vehicular contact requirement have done so on the basis of a carefully reasoned review of the underlying purpose of the legislation. Conversely, those courts in jurisdictions with Type One statutes which have upheld the physical contact requirement have done so on the basis of shallow analysis or careless logic.⁹

Fourteen of the sixteen states with Type Two statutes have ruled on the physical contact requirement. The resulting case law represents an even split in authority--seven choosing to reject the contact requirement¹⁰ with seven clinging to the anachronistic policies of earlier statutes.¹¹ While the courts in Type Two jurisdictions which have rejected the vehicular contact requirement have looked carefully at the statute's origin and the legislative intent to resolve the question of liability, those not rejecting it have rested their decisions on a logical framework supported by three presumptions. First, that there is no legislative intent supporting another construction. Second, that the result of such an interpretation does not lead to an absurd result. And third, that

without definite information as to the unknown motorist's insurance status he is presumed to be insured. See Balestrieri v. Hartford Accident & Indemnity Insurance Company, 112 Ariz. 160, 540 P.2d 126 (Ariz. 1975). (These presumptions were refuted by the dissent in Anderson v. State Farm Mutual Automobile Insurance Company, 133 Ariz. 464, 652 P.2d 537 (Ariz. 1982)).¹²

This logical framework does not withstand close scrutiny. First, as is discussed below, the legislative intent undergirding the Uninsured Motorist Statute supports an opposite construction than that advocated by proponents of the contact requirement.

Second, such an interpretation does lead to an absurd result. In the instant case, had the vehicle fled the scene after colliding with Marakis' vehicle, Marakis could recover. However, Marakis' efforts to avoid contact with the vehicle would bar recovery in spite of competent evidence to substantiate her claim. This interpretation forces a driver to risk injury via collision to insure recovery. Such an interpretation is absurd.

Finally, a presumption that a driver who leaves the scene of an accident is insured defies common sense. An insured motorist would be more likely to stop and identify himself than would an uninsured motorist. If a motorist does not stop and identify himself after an accident the most logical presumption, absent evidence to the contrary, is that the motorist is not insured.

In the Motion for Summary Judgment granted by the court below, the Respondent offered a lengthy list of decisions by state courts which had upheld the vehicular contact requirement. However, the Respondent did not point out to the court that many of those cases

involved statutes explicitly requiring contact between the vehicle of an uninsured motorist and that of a "hit-and-run" motorist as a condition precedent to recovery. Nor did the respondent acknowledge that the majority of state courts interpreting statutes like Utah's Uninsured Motorist Statute (Type One statutes) had soundly rejected the contact requirement as contrary to the purpose of the statute. Indeed, an emerging majority of courts, after reviewing the origins of the Uninsured Motorist Legislation have rejected the requirement of vehicular contact.

II. State Farm's Contractual Requirement of Physical Contact Contravenes the Policy Which Undergirds Utah's Uninsured Motorist Statute.

A. The Origin and Purpose of Uninsured Motorist Legislation

The origin of uninsured motorist legislation is not complex. The rapid increase in the number of automobiles in America following the end of World War II resulted in a dramatic increase in the incidence of automobile accidents. "The inadequacy of the then-existing state laws, which had attempted to eliminate the problem either by encouraging or in some states by requiring motorists to secure insurance, became very apparent." A. Widiss, Uninsured and Underinsured Motorist Insurance, 3 (2d ed. 1985)[hereinafter cited as Widiss]. As legislatures attempted to resolve the inherent difficulties of the existing statutes a debate arose as to whether control over driving privileges or compensation of victims was the proper course to pursue. Widiss at 6-7.

Initially, the new generation of statutes focused upon inducing motorists to obtain insurance and revoking the driving privileges of financially irresponsible tortfeasors. Murphy and Netherton, Public

Responsibility and the Uninsured Motorist, 47 Georgetown L.J. 700 (1959). While the debates in the public sector continued, a more innovative private sector turned this newly created entrepreneurial opportunity to their advantage. In State Farm Fire and Casualty Company v. Lambert, 285 So.2d 917 (Ala. 1973), the Supreme Court of Alabama explained;

A progressive and an imaginative insurance industry moved into this gap and provided, as optional coverage, uninsured motorist protection. The responsible motorist was now able for a nominally increased premium to cover not only his liability to others but protect himself from the loss due to personal injury incurred through the fault of the financially irresponsible. These irresponsible motorists fall basically into two categories--the known driver and the unknown driver (hit-and-run).

While the gap was narrowed, it was not fully bridged. Two deficiencies yet remained: (1) the uninsured motorist coverage was purely contractual and thus wholly optional, and (2) by the terms of the policy the insured's protection against hit-and-run drivers was conditioned on physical contact of the vehicles involved. Lambert at 919. (emphasis added)

In the late 1950's state legislatures began closing these "gaps". Insurance carriers were required to provide coverage for victims of automobile accidents who had valid claims but were unable to collect from the offending motorist. The coverage was no longer optional and the first gap was undisputably closed. However, in 1973, Alabama's Supreme Court had to decide whether the second "gap"--recovery in "hit-and-run" situations contingent on physical contact between the vehicles involved--had also been closed by the mandatory uninsured motorist legislation. Recognizing that the question could not be answered "apart from the historical context within which the statute

was passed," Lambert at 918, the court carefully explained its decision;

In light of this historical perspective, and working within the traditional fault concept, the legislature passed the Uninsured Motorist Statute. By requiring each policy to include such coverage--absent an express disavowal on the part of the insured--the gap represented by the first deficiency was further narrowed. It is equally clear that the statute in providing "for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles" speaks directly to the second deficiency--the unknown or hit-and-run as well as the known financially irresponsible driver.

To hold that the legislative intent had the restrictive effect of speaking only to the first of the two above-referred to deficiencies is to dispute that the purpose of the statute is to protect persons who are injured through the fault of other motorists who in turn are not insured and cannot make whole the injured party. The design of the statute is to protect injured persons who can prove that the accident did in fact occur and that he was injured as a proximate result of the negligence of such other motorist who cannot respond in damages for such injuries.
Lambert at 919.

After reiterating that contract provisions which were more restrictive than were the statutory provisions were not valid, the court answered the physical contact question directly;

We hold, therefore, that the "physical contact" requirement in the "hit-and-run" provision of the automobile liability insurance policies here under consideration is in derogation of the Alabama Uninsured Motorist Statute and is void as against public policy.
Lambert at 920. See also, Montoya v. Dairyland Insurance Company, 394 F.Supp. 1337 (Dist.Ct. N.M. 1975)(the physical contact requirement was in derogation of the remedial nature of the statute and the legislative intent not to allow the creation of a gap in the coverage.)

In Farmers Insurance Exchange v. McDermott, 527 P.2d 918 (Colo.App. 1974), Colorado's Court of Appeals echoed the Alabama Court's interpretation of the statutory language and elaborated upon its application;

. . . the key to the application of the uninsured motorist statute is the inability of the innocent injured party to recover for a loss caused by another's negligence, whether that person is known or unknown. There can be no doubt as to the liability of the errant driver here, had his identity been known. While the language of the statute focuses on the problems of an uninsured motor vehicle, its applicability is not limited to those situations in which the identity of the negligent party is known. Furthermore, the declaration of public policy expresses the legislature's prime concern as the need to compensate the innocent driver for injuries received at the hands of one from whom damages cannot be recovered. McDermott at 920. (emphasis added).

By enacting an uninsured motorist statute, Utah, along with the other states, declared that its prime concern is the need to compensate the victim for injuries inflicted by one from whom damages cannot be recovered. Uninsured motorist coverage is no longer solely a matter to be contracted between parties. Insurance carriers must provide coverage for those injured by tortfeasors from whom they cannot recover.¹³

The question a court must answer before allowing recovery is not whether there was contact between the vehicles but rather, as the Supreme court of Florida explained;

. . . the question to be answered is whether the offending motorist has insurance available for the protection of the injured party, for whose benefit the statute was written; . . . Any other construction of the statute is unfair and unduly restricts the application intended by the

legislature.

Brown v. Progressive Mutual Insurance Company, 249 So.2d 429,430 (Fla. 1971).

In 1984 Idaho's intermediate appellate court rejected the physical contact provision contained in an insurance carrier's policy. In Hammon v. Farmers Insurance Group, 692 P.2d 1202 (Idaho App. 1984), the court carefully reviewed the opposing views of state courts with statutes similar to their own and chose to follow the better reasoned view of the emerging majority;

We choose to follow the view that uninsured motorist statutes were enacted to "expand insurance protection to the public who use the streets or highways." (Citation Omitted). A contractual requirement of physical contact "unjustifiably impedes effectuation of the statutory policy of protection for insured against damage from the negligence of unidentified drivers." (Citation Omitted). Therefore, we hold that the physical contact requirement in the uninsured motorist section of this policy is contrary to I.C. § 41-2502. Consequently, it is void. The Hammons are entitled to litigate the merits of their claim notwithstanding the lack of physical contact with the unidentified vehicle.

Hammon at 1207. See also, DeMello v. First Insurance Company of Hawaii, 55 Hawaii at 524, 523 P.2d at 310 (Hawaii 1974).

The cases cited above were interpreting Type Two statutes which are more vague than is Utah's Type One statute. Courts construing Type One Statutes with language that is similar, if not identical, to the language of the Utah statute agree with the courts cited above that the purpose of the uninsured motorist statute is to compensate those who are entitled, but unable, to collect from the tortfeasor.

In Surrey v. Lumbermen's Mutual Casualty Company, 384 Mass. 171, 424 N.E.2d 234 (Mass. 1981), the Supreme Judicial Court of Massachusetts (a Type One jurisdiction) stated;

The aim of the uninsured motorist statute is to minimize the catastrophic financial loss for victims of automobile accidents caused by the negligence of uninsured tortfeasors. (citations omitted). We believe it is wholly inconsistent with this broad remedial purpose to permit the insurer to evade mandated coverage by erecting an artificial, arbitrary barrier. Surrey at 238. See, Pin Pin H. Su v. Kemper Insurance Companies/ American Motorists Insurance Company, 431 A.2d 416,419 (R.I. 1981)(If one views the situation in light of this statutory purpose, it seems wholly inappropriate to allow an insurance company to deny coverage on the sole ground of lack of physical contact); Biggs v. State Farm Mutual Automobile Insurance Company, 569 P.2d 432 (Okla. 1977)(it would defeat the purpose of the statute to allow insurance contracts to require impact before coverage would be extended to their insured.); Soule v. Stouyvesant Insurance Company, 364 A.2d 416 (N.H. 1976)(Uninsured motorist protection is designed to compensate persons for losses which would otherwise go uncompensated because of the tortfeasor's lack of insurance or unknown identity) and Clark v. Regent Insurance Company, 270 N.W.2d 26 (S.D. 1978)(Purpose of uninsured motorist statute is to provide same protection from injury by uninsured or unknown motorist as would be available had the tortfeasor been known or insured.).

In jurisdictions with Type One statutes, a clear majority of the courts have rejected the physical contact requirement, holding that it is in derogation of the very purpose of the statute. Of the courts interpreting the more vague Type Two statutes, those who have examined the policies which led to the enactment of the statute have also rejected the contact requirement. If we eliminate from the tally those states which explicitly define the contact requirement, the majority of states hold that the physical contact requirement contravenes the purpose for which uninsured motorist statutes were enacted.

B. "Hit-and-Run" is not Synonymous With Physical Contact.

Many courts which uphold the physical contact requirement do so

on the premise that the term "hit-and-run" is synonymous with physical contact. In Ferega v. State Farm Mutual Insurance Company, 303 N.E.2d 459 (Ill. App. 1973), (a Type One jurisdiction) Illinois' intermediate appellate court failed to reject the physical contact requirement because "The use of the words 'hit-and-run vehicle' by the legislature seems to indicate a policy having to do with 'hitting,' which is spelled out as physical impact." Ferega at 461.

Such a rigid construction implies that the meaning of the phrase "hit-and-run" has not expanded or changed since it was first employed by baseball players. This construction ignores the evolution of usage and the adaptability of language to contemporary circumstances.

For example, the term "hit-below-the-belt" was coined by boxers to designate an illegal blow or hit. The term is now a cliché meaning to take unfair advantage. No hit is required for the term to be effective. Evans and Evans, A Dictionary of Contemporary American Usage (1957). Similarly, the term "hit-and-run" now characterizes an accident which is caused by one who subsequently leaves the scene without identifying himself. Its contemporary usage no longer requires nor implies that an actual "hit" occur. It is this contemporary usage which has been adopted by most courts.

In Surrey v. Lumbermen's Mutual Casualty Company, 424 N.E.2d 234 (Mass. 1981), the plaintiff was forced off the road and into a guard rail by an automobile coming from the opposite direction. The operator or owner of the other car was not identified and there was no physical contact between the insured vehicle and the "hit-and-run" vehicle. The defendant-insurer urged a strict construction of the term "hit-and-run" arguing that it was synonymous with "physical

contact". The Supreme Judicial Court of Massachusetts rejected such a construction as improper. The court explained;

The question sub judice, a matter of first impression in the Commonwealth, has been considered by numerous jurisdictions. Our review of those cases indicated that the defendant's position is no longer supported by the majority of the courts, nor is it sustained by a proper view of the legislative intent.

Surrey at 236.

The court then adopted the better reasoned view of the emerging majority;

. . . we conclude that physical contact is not part of the usual and accepted meaning of the term "hit-and-run."

Surrey at 238.

Rhode Island's Supreme Court explained that the common meaning of "hit-and-run" had changed since its inception and was broader than the defendant claimed. The court stated;

In interpreting the language "hit and run" we believe, as did the Supreme Court of Washington, that the term is merely a shorthand colloquial expression that is designed to describe a motorist who has caused, or contributed by his negligence to, an accident and flees the scene without being identified. Thus, there is no inherent connotation that physical contact is an essential part of its definition.

Pin Pin H. Su at 419. See Halseth v. State Farm Mutual Automobile Insurance Company, 268 N.W.2d 730 (Minn. 1978)(The term 'hit-and-run' is synonymous with a vehicle involved in an accident causing damages where the driver flees from the scene, regardless of whether or not physical contact between that vehicle and the insured's automobile occurs.). See also, DeMello v. First Insurance Company of Hawaii, Ltd., 55 Hawaii 519, 523 P.2d 304 (Hawaii 1974)(Since it is clear that one car accidents can be caused by the negligent operation of a second "uninsured" vehicle any contractual prerequisite of physical contact between automobiles undermines the statutory proposes of

HRS § 431-448.)).

A "hit-and-run" motor vehicle accident describes an accident caused by a motorist who has fled the scene. There is no requirement of vehicular contact. To require physical contact re-opens one of the "gaps" in coverage that the statute was designed to close. The Minnesota Supreme Court best explained the inconsistent consequence of inserting the physical contact requirement into the uninsured motorist statute;

Obviously, if an insured could recover damages from a known tortfeasor despite the lack of physical contact between his and the insured's vehicles, the insured's uninsured motorist coverage should apply when the tortfeasor is an unknown hit-and-run driver.
Halseth at 733.

Had Marakis collided with the unidentified vehicle she could recover regardless of her ability to identify either the driver or the vehicle. If she could identify the vehicle or its driver she would be compensated for her injuries even though there was no vehicular contact. However, she has fallen into a coverage "gap" arbitrarily created by State Farm's insurance contract. Her claim is barred by her inability to identify the tortfeasor and her unwillingness to collide with the vehicle which caused the accident.

This was not the intent of the uninsured motorist legislation and a proper construction of the term "hit-and-run" would avoid such a result. Defining "hit-and-run" as requiring physical contact would contravene the very purpose of the statute.

III. There Are Less Harsh and More Effective Means of Detering Fraud than The Physical Contact Requirement

The sole justification for the physical contact requirement is

its alleged evidentiary function. It has been argued that a collision provides objective evidence which corroborates the victim's account of the accident.. Grace v. State Farm Mutual Automobile Insurance Company, 197 Neb. 118,121, 246 N.W.2d 874,877 (Neb. 1976). However, the potential cost of this evidence raises serious doubts concerning its merits.

In Surrey, the defendant-insurer claimed that the physical contact requirement served to prevent fraudulent claims by requiring tangible proof of collision. The court rejected this argument in favor of a more cogent view;

This argument succumbs to the overriding purpose of the legislation. Furthermore, elimination of this arbitrary physical contact requirement does not diminish the plaintiff's burden to prove that the accident actually did occur as she says. We adopt the emerging and better reasoned view of the claimant's evidentiary burden,
Surrey at 238.

In Brown v. Progressive Mutual Insurance Company, 249 So.2d 429, 430 (Fla. 1971), the Florida Supreme Court was less tactful than was the Massachusetts court. The Florida Court rejected outright the validity of the physical contact requirement;

The argument that the policy requirement of physical contact is reasonable is fallacious. The only reason for such a requirement is to prove that the accident actually did occur as a claimant may say it did. This is a question of fact to be determined by the jury, or the judge if demand for jury trial is not made. If the injured party can sustain the burden of proof that an accident did occur, he should be entitled to recover, regardless of the actuality of physical contact.
Brown at 430.

Hawaii's Supreme Court took this argument a step further suggesting

that contact requirement could be used to perpetrate fraud;

We also note the clear possibility of instances in which the contractually imposed requirement will not fulfill its justifiable objective of eliminating fraudulent claims. A claimant with a fraudulent claim can bolster the same, if necessary, by damaging his own car to leave apparent proof of the requisite "physical impact" with a non-existent "unidentifiable vehicle." The contractual "physical impact" requirement thus not only sweeps too broadly, but also not broadly enough to accomplish its only justifiable and statutorily permissible purpose, the prevention of frauds.

DeMello v. First Insurance Company of Hawaii, Ltd.,
523 P.2d 304 (Hawaii 1974).

The physical contact requirement is not a deterrent to fraudulent claims. A motorist clever enough to contrive a scheme to defraud an insurer could easily fabricate the collision and collect on his uninsured motorist coverage. But the alert driver who avoids a collision because he is more concerned with saving his life than preserving his coverage cannot collect under State Farm's statutory construction.

If the plaintiff can prove that there was an accident caused by an unidentified vehicle her claim should not be barred by his ability to avoid collision. In Biggs v. State Farm Mutual Automobile Insurance Company, 569 P.2d 432 (Okla. 1977), the Supreme Court of Oklahoma admitted that the plaintiff bore the burden of proving an accident occurred but argued that he should be allowed to carry that burden. The court stated;

Admittedly, the burden of proof will be upon the insured to show that the accident was in fact caused by an unidentified driver, but this opportunity cannot be denied just because there was no 'impact' with the offending car.

Biggs at 433.

The rejection of the physical contact requirement does not relieve the burden of proving the case. The statute only provides coverage for those who are "legally entitled to recover". U.C.A. § 42-12-21.2 (1953, enacted 1967). There are other evidentiary sources which are less harmful than the requirement of vehicular contact and more effective in terms of proving or disproving the plaintiff's claim.

In a fact situation similar to the instant case The Supreme Court of Rhode Island listed some of the alternative evidentiary sources and processess available to both parties;

We recognize the possibility of fraudulent claims but believe that the element of physical contact is not of significant relevance in the identification and resistance of such claims. The presence or absence of impartial witnesses, the credibility of the claimant's testimony, the ability of the cross-examiner to expose prevarication are all far more efficient tools of the adversary process to expose fraud in this context.

Pin Pin H. Su at 419.

In Clark v. Regent Insurance Company, 270 N.W.2d 26 (1978), the plaintiff was forced, as was Marakis, to swerve to avoid a head-on collision between her motor vehicle and an unidentified motor vehicle. The plaintiff was injured but there was no physical contact between the vehicles.

The defendant argued that not requiring physical contact would result in a flood of fraudulent claims. The court responded;

The contention that the physical contact requirement prevents fraudulent claims appears to be of dubious merit. We have not found any signs of a flood of "phantom vehicle" claims in the states rejecting the requirement, nor have the legislatures of those states found it necessary to

enact a physical contact requirement to their uninsured motorist statutes. We perceive no sound reason to deprive an injured insured of recompense for a valid claim to prevent the "flood of fraudulent claims" which has not materialized in other states.

Clark at 30.

The physical contact requirement has no merit. The requirement of physical contact may itself be used to perpetrate fraud rather than deter it. There are more reliable evidentiary sources. If a plaintiff can prove, to the satisfaction of a judge or jury, that the accident occurred as she testifies that it did, she should not have to risk serious injury or death before being allowed to assert her claim.

IV. The Uninsured Motorist Provision of the Defendant's Insurance Policy Defines "Hit-and-Run" as a Broad Term Which is Not Synonymous With Physical Contact.

State Farm's contract provides coverage for damage done by "hit-and-run" motorists. The contract does not provide coverage for all "hit-and-run" cases, however, it covers only those accidents involving;

2. 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.

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The commonly accepted meaning of the term "hit-and-run" encompasses more than a contact accident where the driver remains unknown. If the phrase "hit-and-run" does not have a broader meaning which includes noncontact accidents, then the limiting language of the contract is superfluous. The language of the contract itself, which is to be construed strictly against the drafter, Hoffman v. Life Insurance Company of North America, 669 P.2d 410 (Utah 1983), implies that the term "hit-and-run" includes accidents involving both known and unknown drivers as well as contact and noncontact accidents. State Farm has simply chosen to limit its coverage to a smaller group of "hit-and-run" cases than is provided for by statute--namely cases where the "hit-and-run" driver is unknown and there has been physical contact between the vehicles.

The purpose of Utah's Uninsured Motorist Statute is to require that insurance carriers provide coverage for persons injured by motorists from whom they are entitled to recover damages but from whom they are unable collect. Whether the insured is unable to collect because the tortfeasor is uninsured or unknown is not material to the statute's purpose since a driver who leaves the scene of an accident and cannot be located is for all practical purposes "uninsured." Hammon v. Farmers Insurance Group, 692 P.2d 1202,1206 (Idaho Ct. App. 1984)(no genuine distinction between the harm caused by known or unknown motorist). Any attempt to place contractual limitations on this statutory coverage are void. Brown v. United Services Automobile Association, 684 P.2d 1195 (Okla. 1984).

If Marakis could identify the offender whose negligence proximately caused her injuries, she could recover. If she had

crashed head-on into the "older model, light colored" automobile State Farm would pay the claim. However, State Farm's policy restricts its uninsured motorist coverage to those cases in which contact occurs. Thus the policy affords less coverage than the statute provides and is therefore void.

V. Criminal "Hit-and-Run" Statutes Which Make Leaving The Scene Of An Accident A Criminal Offense Do Not Require Physical Contact.

Statutes have been enacted by the legislatures of a majority of the states requiring a person involved in an accident to stop and "give certain information, and render aid to those who have been injured." 23 A.L.R. 3d 497, 500. "Familiarly known as "hit-and-run" statutes, these acts generally make the failure to so perform, when the circumstances envisioned by the statutory scheme occur, a felony or misdemeanor." 23 A.L.R. 3d 497, 500.

Utah has such a statute. Section 41-6-29 of the Utah Code provides;

The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 41-6-31. Utah Code Annotated, 1953, § 41-6-29(a)(as ammended 1977).

Section 41-6-31 specifies the information and aid that must be given. Section 41-6-32 makes a similar requirement of "the driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended which results in damage to the other vehicle or property. . . ."

The Utah legislature did not require that the operator of a motor

vehicle make contact with another vehicle before he is required to stop and render assistance. The courts of other states have similarly ruled that the essence of the offense is not the contact between the vehicles. "The gravamen of the offense is failure to stop and provide identification ... and to be available to render assistance if required." State v. Vela, 656 P.2d 536,537 (Wash. App. 1983). Accord, People v. Holford, 403 P.2d 423 (Cal. 1965). New Hampshire's Supreme Court has held;

RSA 262-A:67 (Supp.1975), as is the case with 'hit-and-run' statutes generally, imposes its requirements on any motor vehicle operator who is 'in any manner involved' in an accident, without reference to physical contact. Soule at 885.

The court then explained that the defendant-insurer's "attempted limitation" by contract of the "statutory coverage to less than that required" by the statute was "ineffective" because the phrase "hit-and-run" was not intended to require physical contact. Soule at 885.

Utah's legislature realized that accidents could be caused by motor vehicles which have no physical contact with the other vehicle or vehicles involved. The language "which collides with or is involved in an accident with" is indicative of this understanding. Since the Utah legislature does not require physical contact as the standard for determining when one must stop and give assistance, it would be inconsistent to read such a requirement into the "hit-and-run" clause of the uninsured motorist statute.

VI. The Limiting Provision of State Farm's Insurance Contract is an Artificial and Arbitrary Barrier to Meritorious Claims and is

Therefore Void.

The purpose of the uninsured motorist statute is to require insurance carriers to provide coverage for the victims who are entitled to, but cannot collect, damages. Upholding the physical contact requirement is more than an innocuous misconstruction of a legislative directive. Upholding the contact requirement creates an arbitrary barrier to the assertion of valid claims. The Supreme Court of Hawaii noted;

For us to enforce insurer's physical impact contractual prerequisite would, in effect, amount to our propping up of an arbitrary barricade erected to eliminate all claims for damages resulting from one car accidents. Since it is clear that one car accidents can be caused by the negligent operation of a second "uninsured" vehicle (as here) any contractual prerequisite of physical contact between automobiles undermines the statutory purposes of HRS § 431-448. DeMello at 308. See Surrey at 238. (We believe it is wholly inconsistent with this broad remedial purpose to permit the insurer to evade mandated coverage by erecting an artificial, arbitrary barrier.).

New Hampshire pursued a similar analysis, noting that other legislatures had deliberately inserted a requirement of physical contact while New Hampshire's had not;

The New Hampshire legislature chose not to insert a physical contact requirement into RSA 268:15-a (Supp. 1975) as has been done in some other jurisdictions. (citation omitted). Instead our statute mandates compulsory coverage to "all persons who are legally entitled to recover damages" from uninsured motorists and hit-and-run drivers. The statute thus extends coverage to all accidents caused by uninsured motorists or hit-and-run motorists without any requirement of physical contact. Soule v. Stuyvesant Insurance Company, 364 A.2d 883, 884 (1976). See also, Pin Pin H. Su at 419. (We are of the opinion that the policy

requirement of physical contact is void as against the policy inherent in the uninsured-motorist statute.), and Lambert at 920. (We hold, therefore, that the "physical contact" requirement is in derogation of the Uninsured Motorist Statute and is void as against public policy.).

Utah's uninsured motorist statute, like New Hampshire's statute, provides coverage for those legally entitled to recover damages from uninsured motorists and hit-and-run motor vehicles. U.C.A. § 41-12-21.1 (1953, enacted 1967). It should be similarly construed to provide the full protection envisioned by its drafters. Had the legislature intended to bar the claims of a select group of motorists express provisions would have been made for such exclusion.

The Supreme Court of Pennsylvania summed up the practical effect of upholding the contact requirement in Webb v. United States Automobile Association, 227 Pa. Super. 508, 323 A.2d 737 (1974). The court explained;

If the legislature intended to "provide protection to innocent victims of irresponsible drivers," (citation omitted), it could not also intend that the motorist faced with the decision whether to collide with another vehicle or to avoid it should choose to collide or else lose his protection. Webb at 743.

State Farm's insurance provision requiring physical contact bars the legitimate and evidentially sound claims of an arbitrarily selected group of motorists--those who have not collided with the offending vehicle. This barrier is artificial as it was not intended by the legislature nor is it supported by the statute.

CONCLUSION

Utah's Uninsured Motorist Statute does not require physical contact as a condition precedent to recovery in a "hit-and-run" situation. The lower court's grant of a Summary Judgment in favor of respondent was an error of law. The judgment of the lower court should be reversed and this case should be remanded to the Seventh Judicial District Court of Carbon County where the Appellant can present evidence to sustain her burden of proof as to the authenticity of her claim.

DATED this 3 day of January, 1986.


WAYNE B. WATSON, P.C.
Attorney for Appellant

ENDNOTES

1 Illinois, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Wisconsin. See appendix A

2 Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Montana, New Mexico, Ohio, Pennsylvania, Wyoming See Appendix B

3 Delaware, Missouri, Virginia. See Appendix C

The legislatures enacting Type Two statutes either neglected to include the term "hit-and-run" or assumed, as many courts have held, that the term "uninsured motorist" included all motorists from whom injured motorists were unable to collect.

4 Alaska, California, Iowa, Michigan, Mississippi, Nevada, New York, North Carolina, South Carolina, Tennessee, Texas, West Virginia. See Appendix C

5 Georgia, Oregon, Washington, Kansas. See Appendix D

6 Maryland and New Jersey. See Appendix E

7 Massachusetts, Minnesota, New Hampshire, Oklahoma, Rhode Island and South Dakota

8 Illinois, Nebraska and Wisconsin

9 See, Ferega v. State Farm Mutual Insurance Company, 303 N.E.2d 459 (Ill. App. 1973); Grace v. State Farm Mutual Automobile Insurance Company, 197 Neb. 118, 246 N.W.2d 874 (Neb. 1976) and Hayne v. Progressive Northern Insurance Company, 339 N.W.2d 588 (Wis. 1983).

10 Alabama, Colorado, Florida, Hawaii, Idaho, New Mexico and Pennsylvania.

11 Arizona, Arkansas, Connecticut, Indiana, Kentucky, Louisiana and Ohio

12 See also, Ward v. Consolidated Underwriters, 535 S.W.2d 830 (Ark. 1976); Rosnick v. Aetna Casualty & Surety Company, 374 A.2d 1076 (Conn. 1976); Jett v. Doe, 551 S.W.2d 221,223 (Ky. 1977); Tyler v. State Farm Mutual Automobile Insurance Company, 290 So.2d 388 (La.App 1974) and Travelers Indemnity Company v. Reddick, 37 Ohio St.2d 119, 308 N.E.2d 454,457 (Ohio 1974).

13 Unless such coverage is expressly waived by the insured. See Utah Code Annotated, § 42-12-21.1 (1953, enacted 1967).

APPENDIX A

I. STATUTES USING THE PHRASE "HIT AND RUN" WITHOUT DEFINING THE TERM.

- ILLINOIS: Ill. Ann. Stat. Ch. 73, 755a (Smith-Hurd Supp. 1984).
. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom, . . .
- MAINE: Me. Rev. Stat. tit. 24A, S 2902 (Supp. 1984).
. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured, underinsured or hit-and-run motor vehicles, for bodily injury, sickness or disease, including death, resulting from the ownership, maintenance or use of such uninsured, underinsured or hit-and-run motor vehicle.
- MASSACHUSETTS: Mass. Gen. Laws Ann. ch 175, 113L (West Supp. 1984).
. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles, trailers and semi-trailers and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom,...
- MINNESOTA: Minn. Stat. Ann. s 65B.49(4) (Supp. 1985).
. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of injury.
- NEBRASKA: Neb. Rev. Stat. S 60-509.01 (Reissue 1984).
. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom;
- NEW HAMPSHIRE: N.H. Rev. Stat. Ann. S 264:15 (1982).
. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or drivers of uninsured motor vehicles, and hit-and-run vehicles because of bodily injury, sickness or disease, including death resulting therefrom.
- NORTH DAKOTA: N.D. Cent. Code S 26-02-42 (Supp. 1983).
. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom.

OKLAHOMA: Okla. Stat. Ann. tit. 36, 3636 (West Supp. 1984).

(B) The policy referred to in subsection (A) of this section shall provide coverage therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom.

RHODE ISLAND: R.I. Gen. Laws S 27-7-2.1 (Reenactment 1979).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of property damage, bodily injury, sickness or disease, including death resulting therefrom, provided that the named insured shall have the right to reject such coverage, or that portion thereof that applies to property damage.

SOUTH DAKOTA: S.D.C.L. S 58-11-9 (Supp. 1984).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

UTAH: Utah Code Ann. S 41-12-21.1 (1981).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom.

VERMONT: Vt. Stat. Ann. tit. 23, S 941 (Supp. 1984).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured, underinsured or hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting from the ownership, maintenance or use of such uninsured, underinsured or hit-and-run motor vehicle.

WISCONSIN: Wisc. Stat. Ann. S 632.32(4)(a) (West Supp. 1984).

Uninsured motorist.

1. For the protection of persons injured who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom, in the limits of at least \$25,000 per person and \$50,000 per accident. The insurer may increase the coverage limits provided under this paragraph up to the bodily injury liability limits provided in the policy.

2. In this paragraph "uninsured motor vehicle" also includes:

. . .
b. An unidentified motor vehicle involved in a hit-and-run accident.

APPENDIX B

UNINSURED MOTORIST STATUTES WHICH EXCLUDE THE PHRASE "HIT-AND-RUN"

ALABAMA: Ala. Code S 32-7-23 (Supp. 1984).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

(b) The term "uninsured motor vehicle" shall include, but is not limited to, motor vehicles with respect to which:

(1) neither the owner nor the operator carries bodily injury liability insurance;

(2) any applicable policy liability limits for bodily injury are below the minimum required under section 32-7-6;

(3) the insurer becomes insolvent after the policy is issued so there is no insurance applicable to, or at the time of, the accident; and

(4) the sum of the limits of liability under all bodily injury liability bonds and insurance policies available to an injured person after an accident is less than the damages which the injured person is legally entitled to recover.

ARIZONA: Ariz. Rev. Stat. S 20-259.01 (Supp. 1984).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. For the purposes of the coverage provided for pursuant to this section, "uninsured motorist vehicles", subject to the terms and conditions of such coverage, includes any insured motor vehicle if the liability insurer of the vehicle is unable to make payment on the liability of its insured, within the limits of the coverage, because of insolvency.

ARKANSAS: Ark. Stat. Ann. SS 66-4003 (Supp. 1983).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

COLORADO: Colo. Rev. Stat. S 10-4-319 (1973).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

CONNECTICUT: Conn. Gen. Stat. Ann. S 38-175c (Supp. 1985).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and underinsured motor vehicles and insured motor vehicles, the insurer of which becomes insolvent

prior to payment of such damages, because of bodily injury, sickness or disease, including death resulting therefrom;

FLORIDA: Fla. Stat. Ann. S 627.727 (Supp. 1985).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

HAWAII: Haw. Rev. Stat. S 431-448 (1976).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom,

IDAHO: Idaho Code SS 41-2502 (1977).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

INDIANA: Ind. Code Ann. S27-7-5-2(a)(2) (Burns Supp. 1984).

In limits for bodily injury or death set forth in IC 9-2-1-15 under policy provisions approved by the commissioner of insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom.

KENTUCKY: Ky. Rev. Stat. Ann. S 304.20-020 (Baldwin 1981).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

LOUISIANA: La. Rev. Stat. Ann. s 22-1406D(1)(a) (West 1978).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

MONTANA: Mont. Rev. Codes Ann. s 33-23-201 (1983).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

NEW MEXICO: s66-5-301 (Supp. 1984).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, and for injury to or destruction of property resulting therefrom, according to the rules and regulations promulgated by, and under provisions filed with and

approved by, the superintendent of insurance.

OHIO: Ohio Rev. Code Ann. S 3937.18 (Supp. 1984).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom;

PENNSYLVANIA: Pa. Cons. Stat. Ann. S 40-2000 (Purdon 1971).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom,

WYOMING: Wyo. Stat. Ann. s 31-10-101 (1977).

. . . [f]or the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

APPENDIX C

I. UNINSURED MOTORIST STATUTES WHICH EXPLICITLY DEFINE THE CONTACT REQUIREMENT.

A. STATE'S WITH STATUTES REQUIRING CONTACT

ALASKA- Alaska Statutes S 28.20.445(f) (1984).

If both the owner and operator of the uninsured vehicle are unknown, payment under the uninsured and underinsured motorists coverage shall be made only where direct physical contact between the insured and the uninsured or underinsured motor vehicles has occurred. A vehicle that has left the scene of the accident with an insured vehicle is presumed to be uninsured if the person insured reports the accident to the appropriate authorities within 24 hours.

CALIFORNIA- Cal. Ins. Code s 11580.2 (b) (West Supp. 1984).

The term "uninsured motor vehicle" means a motor vehicle ..., [or] the owner or operator thereof be unknown, provided that, with respect to an "uninsured motor vehicle" whose owner or operator is unknown:

(1) The bodily injury has arisen out of physical contact of such automobile with the insured or with an automobile which the insured is occupying.

IOWA- Iowa Code Ann. S 516A.1 (Supp. 1984)

... legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle or an underinsured motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident.

MICHIGAN- Mich. Comp. Laws S 257.1112 (1977).

Where the death of or personal injury to any person is occasioned in this state by a motor vehicle but the identity of the motor vehicle and of the driver and owner thereof cannot be established, any person who would have a cause of action against the owner or driver in respect to the death or personal injury may bring an action against the secretary, either alone or as a codefendant with others alleged to be responsible for the death or personal injury. In any action commenced under this section, physical contact by the unidentified vehicle with the plaintiff or with a vehicle occupied by the plaintiff, is a condition precedent to such action.

MISSISSIPPI- Miss. Code Ann. S 83-11-103(c) (Supp. 1984).

(c) The term "uninsured motor vehicle" shall mean:

. . . .
. . . .
. . . .
. . . .
. . . .

(v) A motor vehicle of which the owner or operator is unknown; provided that in order for the insured to recover under the endorsement where the owner or operator of any motor vehicle which causes bodily injury to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

NEVADA- Nev. Rev. Stat. S 690B.020 3.(e) (1957).

. . . . legally entitled to recover damages from owners or operators of uninsured or hit-and-run motor vehicles. . . .

3. For the purposes of this section the term "uninsured motor vehicle" means a motor vehicle:

. . . .
. . . .
. . . .
. . . .

(e) The owner or operator of which is unknown or after reasonable diligence cannot be found if:

(1) The bodily injury or death has resulted from physical contact of the automobile with the named insured or the person claiming under him or with an automobile which the named insured or such a person is occupying;

Note- this language is the product of a 1979 amendment.

NEW YORK- N.Y. Ins. Law S 5217 (Mckinney Supp. 1984).

(A) The protection provided by this article shall not apply to any cause of action by an insured or qualified person arising out of a motor vehicle accident occurring in this state lying against a person or persons whose identity is unascertainable, unless the bodily injury to the insured or qualified person arose out of physical contact of the motor vehicle causing such bodily injury with the insured or qualified person or with a motor vehicle which the insured or qualified person was occupying at the time of the accident.

(B) The word "occupying" means in or upon or entering into or alighting from.

NORTH CAROLINA- N.C. Gen. State. S 20-279.19 (b)(3)b. (1983).

Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of a collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer:

SOUTH CAROLINA- S.C. Code Ann. S 56-9-850 (1976).

If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, there shall be no right of action or recovery under the uninsured motorist provision, unless

. . . .
(2) The injury or damage was caused by physical contact with the unknown vehicle, and

. . . .

TENNESSEE- Tenn. Code Ann. S 56-7-1201 (Supp. 1984).

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, the insured shall have no right to recover under the uninsured motorist provision unless:

(1) Actual physical contact shall have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured;

TEXAS- Tex. Ins. Code Ann. S 5.06-1(2)(d) (1981).

. . . in order for the insured to recover under the uninsured motorist coverages where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

WEST VIRGINIA- W.Va. Code S 33-6-31(e) (Supp. 1984).

If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, the insured, or someone in his behalf in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

. . . .

. . . .

(iii) Upon trial establish that the motor vehicle, which caused the bodily injury or property damage, whose operator is unknown, was a "hit and run" motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time of the accident.

B.STATE'S WITH STATUTES EXPLICITLY NEGATING THE CONTACT REQUIREMENT

DELAWARE- Del. Code Ann. Title 18 S 3902(a)(3) (Supp. 1984).

For the purpose of this section, an uninsured vehicle shall be defined as:

. . . .

. . . .

(c) A hit-and-run motor vehicle that causes an accident resulting in bodily injury or property damage to property of the insured. Bodily injury or property damage must be caused by

physical contact of the hit-and-run vehicle with the insured or with an insured motor vehicle, or by a noncontact vehicle where the identity of both the driver and the owner of such vehicle are unknown.

Note- Prior to 1982 Del. Code tit. 18 S 18 3902 contained the following language:

...for the protection of persons who are legally entitled to recover damages from owners or operators of uninsured or hit-and-run motor vehicles....

In 1982 the section was amended to define "hit-and-run."

MISSOURI- Mo. Rev. Stat. S 379.203 (Supp. 1984).

. . . who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. Such legal entitlement exists although the identity of the owner or operator of the motor vehicle cannot be established because such owner or operator and the motor vehicle departed the scene of the occurrence occasioning such bodily injury, sickness or disease, including death, before identification. It also exists whether or not physical contact was made between the uninsured motor vehicle and the insured or the insured's motor vehicle.

VIRGINIA- Va. Code S 38.1-381(d) (Supp. 1984).

If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, and if the damage or injury results from an accident where there has been no contact between such motor vehicle and the motor vehicle occupied by the insured or where there has been no contact with the person of the insured if he was not occupying a motor vehicle, then in order for the insured to recover under the endorsement, the accident shall be reported promptly to either the insurer, the Division of Motor Vehicles, on a form prescribed by the Division for reporting accidents, or a law-enforcement officer having jurisdiction in the county or city in which the accident occurred, unless it is impracticable to do so, in which event, such report shall be made as soon as reasonably practicable under the circumstances.

APPENDIX D

I. STATUTES REQUIRING COMPETENT EVIDENCE AS AN ALTERNATIVE TO THE PHYSICAL CONTACT REQUIREMENT

GEORGIA: Ga. Code Ann. s 56-407.1 (Supp. 1984).

(a)(1) No automobile liability policy or motor vehicle liability policy shall be issued or delivered in this state to the owner of such vehicle licensed in this state upon any motor vehicle then principally garaged or principally used in this state unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,
. . . .

(b)(2) A motor vehicle shall be deemed to be uninsured if the owner or operator of the motor vehicle is unknown. In those cases recovery under the endorsement or provisions shall be subject to the conditions set forth in subsections (c) through (j) of this Code section and, in order for the insured to recover under the endorsement where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by the unknown person and the person or property of the insured. Such physical contact shall not be required if the description by the claimant of how the occurrence is corroborated by an eyewitness to the occurrence other than the claimant.

Note- Prior to January 1, 1985 the Georgia legislature required physical contact in those cases where owner or operator of the offending vehicle was unknown. The above language requiring contact only in cases lacking independent competent evidence became effective January 1, 1985.

OREGON- Or. Rev. Stat. S 743.792(2) (1983).

(f) "Hit-and-run vehicle" means a vehicle which causes bodily injury to an insured arising out of physical contact of such vehicle with the insured or with a vehicle which the insured is occupying at the time of the accident, provided:

(A) There cannot be ascertained the identity of either the operator or the owner of such hit-and-run vehicle;
. . . .

(g) "Phantom vehicle" means a vehicle which causes bodily injury to an insured arising out of a motor vehicle accident which is caused by an automobile which has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident, provided;

(A) There cannot be ascertained the identity of either the

operator or the owner of such phantom vehicle;

(B) The facts of such accident can be corroborated by competent evidence other than the testimony of the insured or any person having an uninsured motorist claim resulting from the accident;

WASHINGTON- Wash. Rev. Code S 48.22.030(2) (1984).

. . . legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles. . .

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

KANSAS- Kan. Stat. Ann. s 40-284 (Supp. 1984).

. . . legally entitled to recover as damages from the uninsured owner or operator of motor vehicle. . .

(e) Any insurer may provide for the exclusion of limitation of coverage:

. . . .
. . . .

(3) When there is no evidence of physical contact with the uninsured motor vehicle and when there is no reliable competent evidence to prove the facts of the accident from a disinterested witness not making a claim under the policy;

APPENDIX E

I. STATUTES DEFINING "HIT-AND-RUN" OR REQUIRING AS AN ALTERNATIVE THAT THE OWNER OR OPERATOR OF THE MOTOR VEHICLE BE "UNIDENTIFIABLE".

MARYLAND: Md. Ann. Code art. 48A; S 481A (1979).

Any endorsement or provision protecting the insured against damage caused by an uninsured motor vehicle, contained in any policy of insurance issued and delivered in this State, shall be deemed to cover damage caused by a motor vehicle of which the liability insurer is or becomes insolvent or otherwise unable to pay claims, in like manner and to like extent as for damage caused by a motor vehicle as to which no liability insurance exists.

Md. Ann. Code art. 48A, § 243H (Supp. 1984).

(a) Types of claims which may be made against Fund.-

The following types of claims arising after January 1, 1973, may be made against the Fund under this section subject to the provisions of this subtitle, and to the extent that the claim is not covered by a policy of motor vehicle liability insurance:

(1) Claims for the death of or personal injury to a qualified person or for damage to property in excess of \$100, arising out of the ownership, maintenance or use of a motor vehicle in this State where the identity of the motor vehicle and of the operator and owner thereof cannot be ascertained or it is established that the motor vehicle, at the time the accident occurred, was in the possession of some person other than the owner without the owner's consent and that the identity of the person cannot be ascertained; provided that

. . . .
. . . .
. . . .

(iv) All reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and operator thereof and either the identity of the motor vehicle and the owner and operator thereof cannot be established, or the identity of the operator who was operating the motor vehicle without the owner's consent cannot be established.

NEW JERSEY: N.J. Stat. Ann. SS 17:28-1.1 (1985).

For payment of all or part of the sums which the insured or his legal representative shall be legally entitled to recover as damages from the operator or owner of an uninsured motor vehicle, or hit and run motor vehicle, as defined in section. . . [39:6-78], because of bodily injury, sickness or disease, including death resulting therefrom, sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured or hit and run motor vehicle anywhere within the United States or Canada;

N.J. Stat. Ann. 39:6-78 (Supp. 1985).

§§

When the death of, or personal injury to, any person arises out of the ownership, maintenance or use of a motor vehicle in this State on or after April 1, 1955, but the identity of the motor vehicle and of the operator and the owner thereof cannot be ascertained or it is established that the motor vehicle was, at the time said accident occurred, in the possession of some person other than the owner without the owner's consent and that the identity of such person cannot be ascertained, any qualified person who would have a cause of action against the operator or owner or both in respect to such death or personal injury may bring an action therefor against the director in any court of competent jurisdiction, but no judgment against the director shall be entered in such action unless the court is satisfied, upon the hearing of the action, that--

. . . .
. . . .
. . . .
. . . .

(e) All reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and operator thereof and either that the identity of the motor vehicle and the owner and operator thereof cannot be established, or that the identity of the operator who was operating the motor vehicle

ADDENDUM

RAY PHILLIPS IVIE
IVIE & YOUNG
Attorneys for Defendant
48 North University Avenue
P. O. Box 672
Provo, Utah 84603

375-3000

IN THE SEVENTH JUDICIAL DISTRICT COURT OF CARBON COUNTY

STATE OF UTAH

LISA MARAKIS,	:	
	:	
Plaintiff,	:	J U D G M E N T
	:	
vs.	:	
	:	
STATE FARM FIRE AND	:	
CASUALTY CO.,	:	Civil No. 14,390
	:	
Defendant.	:	
	:	

The above-entitled matter came on regularly and duly before the Court on the 11th day of July, 1985, pursuant to the parties' cross motions for summary judgment. The Court being fully advised in the premises, and having previously entered Findings of Fact, Conclusions of Law, and an Order granting defendant's Motion for Summary Judgment, hereby enters judgment as follows:

Defendant is awarded judgment against plaintiff, no cause for action.

DATED AND SIGNED this 29 day of July, 1985.

BY THE COURT:

151 Boyd
BOYD BUNNELL, District Judge

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing
Judgment, with postage prepaid thereon this 17th day of July,
1985, to:

Wayne B. Watson
Beverley A. Ramsey
Attorneys at Law
2695 North University Avenue
Suite 220
Provo, Utah 84604

L. B. Bluth
Secretary

RAY PHILLIPS IVIE
IVIE & YOUNG
Attorneys for Defendant
48 North University Avenue
P. O. Box 672
Provo, Utah 84603

375-3000

IN THE SEVENTH JUDICIAL DISTRICT COURT OF CARBON COUNTY
STATE OF UTAH

LISA MARAKIS,	:	
	:	FINDINGS OF FACT AND
Plaintiff,	:	CONCLUSIONS OF LAW
vs.	:	
STATE FARM FIRE AND	:	
CASUALTY CO.,	:	Civil No. 14,390
	:	
Defendant.	:	

This matter having come before the Court pursuant to plaintiff and defendant's cross motions for summary judgment, and the Court having reviewed the memorandum of legal points and authorities, affidavits, and undisputed facts revealed through discovery, and the Court being fully advised in the premises hereby enters the following:

FINDINGS OF FACT

1. The Court finds for the purpose of plaintiff's and defendant's respective motions for summary judgment that plaintiff, Lisa Marakis, alleges that she was involved in a motor vehicle accident on or about September 4, 1982. (Complaint, Paragraph 6)

2. That the motor vehicle accident was alleged by plaintiff to have occurred when her vehicle was forced from the road by an unidentified vehicle which plaintiff further alleges to have left the scene of the accident. (Plaintiff's Affidavit)

3. That the only person known to plaintiff who witnessed the motor vehicle accident is the plaintiff herself. (Plaintiff's Answers to Interrogatories)

4. That the vehicle driven by plaintiff at the time of the accident as alleged by plaintiff, was a 1976 2-door Datsun automobile, owned by Harold J. and Mary Fowler. (Affidavit of Mary Fowler)

5. That at the time of the incident as alleged by plaintiff, the vehicle was the subject of a policy of insurance between the Fowlers and defendant State Farm Fire and Casualty Company, Policy No. S06-3676-C25-44. That said policy contained provisions for uninsured motorist insurance. (Complaint)

6. That the policy of insurance between the Fowlers and defendant 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. That the policy further 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.

Based upon the foregoing Findings of Fact, the Court does hereby enter the following:

CONCLUSIONS OF LAW

1. The Court concludes as a matter of law that the contract of insurance between defendant and Harold J. and Mary Fowler does not require defendant to perform under the contract pursuant to the uninsured motorist provision of said contract due to the fact that no physical contact between the vehicle driven by plaintiff and the unidentified vehicle occurred.

2. The Court further concludes that the unidentified vehicle is not a "hit-and-run" motor vehicle within the meaning of that term as used in Section 41-12-21.1, Utah Code Annotated, or within the generally accepted meaning of the term.

3. The Court further concludes ~~that~~ defendant is entitled to summary judgment against ~~plaintiff~~.

DATED AND SIGNED this 29 day of July, 1985.

BY THE COURT:

151 Boyd Bunnell
BOYD BUNNELL, District Judge

RECEIVED JUL 15 1985

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR CARBON COUNTY,
STATE OF UTAH

LISA MARAKIS,)	
Plaintiff,)	
v.)	RULING ON MOTION TO
)	RECONSIDER AND DEFEND-
STATE FARM FIRE AND)	ANT'S MOTION FOR SUM-
CASUALTY CO.,)	MARY JUDGMENT
)	-----
Defendant.)	
)	Civil No. <u>14390</u>

In this case, the Court previously granted the motion of the Plaintiff for summary judgment finding that there was no issue of fact and ruling that the Defendant's insurance policy requiring physical contact as to an uninsured motorist accident was void and against public policy. At the time the motion was granted, the Defendant had not filed any objection to the motion or any counter-memorandum of points and authorities or any affidavits.

Thereafter, for good cause shown the Court allowed the Defendant to submit it's counter-memorandum and agreed to reconsider the legal ruling as originally made.

The Court has now considered the legal authorities submitted by the Defendant and has concluded it's original ruling was in error and does hereby set aside the previous summary finding that was signed by the Court on May 20, 1985.

The Defendant has now filed it's Motion For Summary Judgment contending that there must be physical contact with another vehicle to put the policy into effect under the "hit and run" provisions.


The Plaintiff in her answers to request for admissions and in her answers to interrogatories and in her memorandum of points and authorities, admits that there was no physical contact between the vehicle she was driving and the vehicle that allegedly ran her off the road. The Court has considered the cases submitted by both counsel relative to this issue and has concluded that the majority rule and the better reasoned cases require that physical contact actually take place. The Court is of the opinion that the generally accepted definition of "hit and run" as used in Section 41-12-21.1 of the Utah Code and the definition as found in Section III of the policy which states "A hit and run land motor vehicle whose owner or driver remains unknown and which strikes the vehicle the insured is occupying or causes bodily injury to the insured" must be accepted to mean that physical contact is required in order to create any liability under the policy.

Therefore, the Court grants the Defendant's Motion For Summary Judgment under the undisputed facts of this case and finds that the Plaintiff has no cause of action against this Defendant as a matter of law.

In view of the Court's ruling, it is not necessary to rule on other motions and issues that are presently pending.

The attorney for the Defendant is ordered to prepare a formal order in accordance with this opinion.

Dated this 11 day of July, 1985.



BOYD BUNNELL, DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the foregoing RULING ON MOTION TO RECONSIDER AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT by depositing the same in the United States Mail, postage prepaid, to the following:

Wayne B. Watson
Beverley A. Ramsey
Attorneys At Law
2696 North University Avenue
Suite 220
Provo, Utah 84604

Ray P. Ivie
Attorney At Law
P. O. Box 672
Provo, Utah 84603

Dated this 19th day of July, 1985.



LAUREL A. RAMSTETTER,
COURT ADMINISTRATOR

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR CARBON COUNTY,
STATE OF UTAH

LISA MARAKIS,)	
)	RULING ON MOTION FOR
Plaintiff,)	SUMMARY JUDGMENT
)	
vs.)	
)	
STATE FARM FIRE AND)	
CASUALTY COMPANY,)	
)	
Defendant.)	Civil No. <u>14390</u>

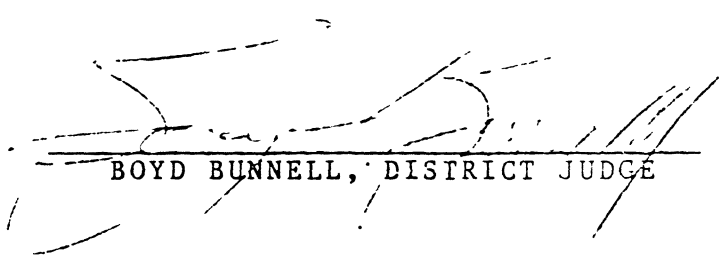
In this case, the plaintiff has filed a Motion for Summary Judgment and has supported the Motion by affidavits and a memorandum of legal points and authorities. The defendant has filed no objection or opposition to the Motion within the time allowed by our Rules of Practice.

Based upon the Affidavit submitted by plaintiff, the Court finds that there is no disputed issue of material fact in this case and has further concluded, based upon an examination of the legal authorities submitted by plaintiff, that the provisions in defendant's insurance policy requiring physical contact before the insurance claim is viable as to an uninsured motorist accident, is void and unenforceable and against public policy.

THEREFORE, the Court grants partial summary judgment in favor of the plaintiff and against the defendant on the issue of liability, and will, upon application, set a hearing date for receipt of evidence to establish the amount of plaintiff's damage.

The Attorney for the plaintiff is instructed to prepare a formal judgment in accordance with this opinion.

DATED this 30th day of April, 1985.



BOYD BUNNELL, DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the foregoing RULING ON MOTION FOR SUMMARY JUDGMENT by depositing the same in the United States Mail, postage prepaid, to the following:

Wayne B. Watson, P.C.
Beverly A. Ramsey
Attorneys at Law
2595 North University Avenue
Suite 220
Provo, Utah 84604

Ray Phillips Ivie
IVIE & YOUNG
Attorneys at Law
48 North University Avenue
P. O. Box 672
Provo, Utah 84603


DATED this 30th day of April, 1985.


Secretary

CERTIFICATE OF SERVICE

I hereby certify that I served four (4) copies by mail of the foregoing Appellant's Brief on Appeal to the following on the 3 day of January, 1986:

Ray Phillips Ivie
IVIE & YOUNG
Attorney for Respondent
P.O. Box 672
Provo, UT 84603


WAYNE B. WATSON, P.C.
Attorney for Appellate