

1989

# Kim J. Tanner v. The Phoenix Insurance Company : Brief of Respondent

Utah Court of Appeals

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BRIEF

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DOCKET NO.

890521-CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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KIM J. TANNER,	:	
	:	
Plaintiff and	:	BRIEF OF RESPONDENT
Appellant,	:	
	:	
v.	:	
	:	
THE PHOENIX INSURANCE COMPANY,	:	Case No. 890521-CA,
	:	
Defendant and	:	Category 14b
Respondent.	:	

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FILED

DEC 26 1989

Mary T. Newman  
Clerk of the Court  
Utah Court of Appeals

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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KIM J. TANNER,	:	
	:	
Plaintiff and	:	BRIEF OF RESPONDENT
Appellant,	:	
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### JURISDICTION AND PROCEEDINGS BELOW

Plaintiff appeals from Judge Rigtrup's Order granting the Motion for Summary Judgment of defendant Phoenix Insurance Company ("Phoenix"), and denying plaintiff's Motion for Summary Judgment. That Order, dated May 30, 1989, dismissed plaintiff's Complaint with prejudice, and constituted a final judgment. The Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2(3)(j). The Supreme Court exercised its power pursuant to Utah Code Ann. § 78-2-2(4) to transfer this case to the Court of Appeals. This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j).

This is a declaratory judgment action where plaintiff seeks an interpretation of the meaning of a section of the Utah Insurance Code, Utah Code Ann. § 31A-22-307(1)(b)(ii). There being no disputed material facts, the District Court ruled that the controverted section did not compel payments for expenses or services in excess of twenty dollars per day, or beyond the amount submitted on a given day, whichever is less. This decision resulted in the dismissal of plaintiff's Complaint.

### STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the personal injury protection "special damage allowance" provided for in Utah Code Ann. § 31A-22-307(1)(b)(ii) is an aggregate sum or is subject to a daily limit.

Plaintiff also raises two other issues which were not ruled on by the district judge, and are not properly raised on appeal. Those issues are whether payment may be made for services

provided by family members or for the labor expense of meals eaten out. Neither question was really at issue before Judge Rigtrup because those items had in fact been paid by Phoenix, up to the twenty dollar per day statutory limit. Phoenix also indicated the numerous disputed issues of material fact surrounding the payment of the specific items sought by plaintiff in this case. Since the court below found that the statute did not require payments in excess of twenty dollars per day, it did not even reach any issues concerning these questions, and accordingly they are moot and should not be addressed on appeal.

#### DETERMINATIVE STATUTORY PROVISIONS

This case turns on the interpretation of Utah Code Ann. § 31A-22-307(1)(b)(ii) (1986), which reads as follows:

Personal injury protection coverages and benefits include:

(b)(ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks . . .

#### STATEMENT OF THE CASE

The facts set out by plaintiff were admitted by Phoenix for purposes of the summary judgment motion below. R. 41.

### SUMMARY OF ARGUMENT

The statute's literal terms provide for a daily limit on the amount of special damage allowance which is payable. Plaintiff's interpretation would require the Court to gloss over the plain meaning of the statute and impose a convoluted reading which violates the rules of statutory construction.

Plaintiff's interpretation would also not serve the legislative intent to reduce costs, effectuate savings and provide prompt payments. It would instead open up insurance carriers to an indefinite amount of liability and encourage them to scrutinize claims which are currently paid up to the statutory limit, without dispute.

The one case plaintiff presents in support of her position involves a New Jersey statute which, unlike Utah, does not provide for payment for gratuitous services. The Utah statute reflects a balancing of the wish to pay for gratuitous services rendered while avoiding unnecessary administrative expense and limiting the insurance carrier's exposure to excessive or fraudulent claims. The daily statutory limitation permits a reasonable amount of gratuitous services to be compensated for while permitting the carrier (and therefore the public who pays the premiums) to avoid excessive costs from exorbitant claims or the investigation of such claims. The \$20 daily limit is the legislative answer to these competing interests. This Court should respect that determination by giving effect to the statute as written and affirm the District Court's order.



### ARGUMENT

Plaintiff requests this Court to endorse a strained interpretation of Utah's No-Fault Act, Utah Code Ann.

§ 31A-22-307(1)(b)(ii) (1986) which would grant her a few additional dollars, impose a large administrative and financial burden on insurance companies paying benefits under the Act, and frustrate the Legislature's intentions to reduce costs, effectuate savings, and promote prompt payment on claims.

Utah's No-Fault Act provides personal injury protection to covered individuals ("PIP benefits"). Those PIP benefits include medical expenses, up to \$3,000 per person; lost wage benefits up to \$250 per week for up to 52 weeks; and a special damage allowance "not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses actually incurred for services . . ." It is this last element, the special damages allowance, which concerns us in this case. Plaintiff claims that the quoted language should be read to provide an aggregate total to permit her to receive \$20 for each day of incapacity, up to the total amount claimed for services which Plaintiff would have performed for her household but for her injury, regardless of when the services were rendered or expenses incurred, rather than receiving the allowance for services actually rendered or expenses actually incurred up to a daily limit of \$20.00.

It should be noted that the other issues mentioned by plaintiff, whether the allowance may be recovered for services provided by family members or for the labor portion of the expense

for meals eaten at a restaurant, are moot and not properly on appeal. It is undisputed that Phoenix has paid for such benefits to the extent they have been claimed, up to the statutory limit of \$20 per day. Accordingly, these questions are not in dispute, were not considered by the trial judge in granting Phoenix's motion for summary judgment, and should not be considered on appeal. It is also clear that payment of any additional amounts would be subject to the limitation of reasonableness imposed by the statute, and would require the determination of disputed material facts to resolve.

THE STATUTE IS CLEAR AND REQUIRES A DAILY LIMIT ON AMOUNTS PAYABLE.

The issue before the Court is whether the No-Fault Act mandates payments in excess of the services actually rendered or expenses actually incurred on a given day. The statute requires an allowance "not exceeding \$20 per day for a maximum of 365 days . . ." While there is no Utah authority directly on point, the plain language of the statute, the legislative proposal it serves, and Utah case law interpreting its predecessor, all compel the conclusion drawn by the court below--that no such additional payments are required.

A. The Rules of Statutory Construction Require That Meaning Be Given To All Terms of the Statute.

To argue that the Utah statute establishes only an aggregate upper limit rather than a daily allowance for amounts

incurred that day, up to twenty dollars, offends the plain meaning of the section. Plaintiff's interpretation strips the term "not exceeding \$20 per day" of all meaning, other than as a measuring stick of the amount recoverable, i.e., \$20 x the number of days of disability. As this Court recently stated:

The basic rule for statutory construction is that words used in statutes should be given their ordinary, plain meaning: 'the presumption is that the words are used in their ordinary sense, and if a different interpretation is sought it must rest upon something in the character of the legislation or in the context which will justify a different meaning.

In the Matter of Adoption of M.L.T., 746 P.2d 1179 at 1180 (Utah App. 1987), quoting Deseret Savings Bank v. Francis, 62 Utah 85, 217 P. 1114, 1115 (1923). The Court should also give effect to the Legislature's underlying intent, assume that each term in a statute was used advisedly, and interpret the statute in accordance with its literal wording unless it is unreasonably confusing or inoperable. Gleave v. Denver & Rio Grande Western Railroad, 749 P.2d 660, 672 (Utah App. 1988).

Here the statutory language provides for:

. . . a special damage allowance not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household . . .

§ 31A-22-307(1)(b)(ii). The literal reading of this section is that a \$20 per day limit is placed on services actually rendered or reasonably incurred that day. By contrast, plaintiff wishes the Court to ignore the statutory language and instead act as if

it read "a special damage allowance not to exceed a total of \$20 dollars times the number of days of disability, up to 365 days." If that had been intended, it would have been drafted that way by the Legislature.

The literal reading of the statute is in harmony with the legislative intent shown when the No-Fault Act was originally enacted to "stabilize, if not effectuate certain savings in the rising costs of automobile accident insurance." Jamison v. Utah Home Fire Insurance Company, 559 P.2d 958, 960 (Utah, 1977) (emphasis by the Court), citing Utah Code Ann. § 31-41-2. To permit recovery beyond that provided by the strict wording of the statute would contravene the legislative intent. The statute is to be construed to promote justice, and to carry out the purpose of the Insurance Code that "policyholders, claimants, and insurers are treated fairly and equitably; . . . " Utah Code Ann. § 31A-1-102(2) (1985). As discussed below, the Utah statute balances the wish to pay claims for certain "primary damages as to necessary medical, hospital, and loss of wages . . . without undue delay." Jamison, supra, 559 P.2d at 959, with the "stated objective" to effectuate savings. Id at 960. Plaintiff's interpretation fails to give the words of the statute their full meaning, and would also throw off this legislatively crafted balance.

B. Utah Case Law Rejects Interpretations Which Gloss  
Over The Statutory Language.

In Jamison, supra, the Utah Supreme Court discussed § 31-41-6(1)(b)(ii), the predecessor to § 31A-22-307(1)(b)(ii). That section provided in pertinent part:

. . . in lieu of reimbursement for expenses which would have been reasonably incurred for services . . . regardless of whether any of these expenses were actually incurred, an allowance of \$12.00 per day . . . continuing for a maximum of 365 days thereafter . . .

The plaintiff in Jamison sought an "automatic award of \$12 per day for injury to any member of a household who would have performed services of any nature, however much or minimal, and whether their value is great or small." 559 P.2d at 959. The Court rejected such an approach, applying instead a "rule of reason" in determining what amounts could be recovered in any given case, stating:

The principle which best serves the objective to be desired is to give both parties the benefit of a sensible, even-handed and practical application of the statute, under the assumption that all of its language was used advisedly and in harmony with its purposes. If the Act had intended reimbursement for any and all duties performed by members of households, it could have plainly so stated. But it does not do so. Only by keeping the awards within reason, and excepting therefrom claims that might be unrealistic, fanciful, or perhaps even fraudulent, can the stated objective, 'to effectuate . . . savings in the rising costs of automobile accident insurance . . . ' be accomplished. Otherwise it is obvious that necessary increases in premiums would defeat, rather than promote, the purposes of the Act.

559 P.2d at 960 (footnotes omitted, emphasis in original).

Similarly, if the Legislature intended to only provide a cap on recovery rather than a daily limit, it could have easily done so. Just as the attempt was rejected in Jamison to recover the allowance without regard to the statutory requirement that the expenses "would have been reasonably incurred," so should plaintiff's attempt here be rejected to recover without regard to the statutory limitation of \$20 per day.

Section 31A-22-307(1)(b)(ii) differs from § 31-41-6(1)(b)(ii) by raising the daily limit to \$20 and attempting to spell out the Jamison court's holding that recovery could be either expenses reasonably incurred or services actually rendered. That amendment and renumbering, however, does nothing to undermine the force of the Jamison court's determination that automatic payments are not permitted. Plaintiff here seeks to recover payments automatically, without regard to the daily limitation provided in that statute.

C. Plaintiff's Interpretation Raises Problems Of Interpretation and Administration.

Plaintiff's aggregate limit interpretation either permits plaintiff to recover up to  $20 \times 365$ , without regard to the length of disability, an interpretation clearly at odds with the intent to effectuate savings the Supreme Court relied so heavily upon in Jamison; or to obtain up to  $\$20 \times$  the number of days of disability. This latter version raises serious problems of implementation and interpretation. To eliminate the statutory

daily limit would cast carriers adrift with no practicable way to determine how much to pay. Presumably, plaintiff's argument is that Phoenix should pay more than twenty dollars on some days on the hope that it will be able to offset that overpayment against other days when reimbursement for less than \$20 is claimed. However, this non-textual interpretation provides no guidance in determining how far off of a twenty dollar per day average the carrier should get in making payments.

Plaintiff's situation demonstrates a few of the problems with her approach. Referring to her household services worksheet, Exhibit A to plaintiff's Brief, R. 23-25, plaintiff was injured on June 16, 1988. In the next fourteen days, June 17-June 30, plaintiff claims reimbursement for \$640.50, when even recovering \$20 for every day would only yield \$280 (and plaintiff was paid \$270). How much of the excess money should Phoenix have advanced? Reviewing amounts claimed for the next month shows that there was little opportunity to set off any additional amounts paid. During July, plaintiff claimed \$800.50, while recovery of \$20 each day would only yield \$620. How many days, weeks, or months would a carrier have to overpay before it could begin to pay less than \$20 on a day when \$20 or more was claimed in order to avoid overpaying? The problem becomes impossible when one considers that the duration of a claimant's disability is variable and impossible to ascertain in advance. A carrier could advance payments and then never have a chance to offset if the claimant recovers sooner than expected. If the carrier were to delay

payment until the end of disability to avoid this problem, it would frustrate the Act's clear intention to provide payment "without undue delay." Jamison, 559 P.2d at 959. Following the language of the statute and limiting payment to expenses incurred or services rendered in a given day, up to \$20, avoids these problems and permits a fast, definitive determination of the claimant's entitlement, effectuating the statutory purpose of treating the claimants and insurers fairly and equitably.

The statutory daily limit serves also another purpose--it avoids many disputes regarding the reasonableness of claimed expenses or services. As the Jamison decision makes clear, the determination of the compensability of each claim is an issue of fact turning upon the circumstances of the claim. Where a carrier can, as Phoenix did here, attempt to avoid the expense and delay of disputing certain items by paying the daily maximum of \$20, the statute's purpose of treating the parties fairly and avoiding delay is served. Under plaintiff's interpretation, however, the carrier must scrutinize every claim to avoid having to pay it through some as yet undeveloped procedure to offset against hoped-for future underpayments.

Reference to plaintiff's circumstances illustrates this point. It is clear under Jamison that payment is only required for work actually done, which the plaintiff would have done but for the injury, and for which it is reasonable to incur expenses, regardless of whether or not expenses were actually incurred. 559 P.2d at 960-961. In the period June 26 through June 30, plaintiff



claims that 59.1 hours of services were rendered, as well as additional restaurant expense, for a total of \$301.50. Rather than having to investigate each item exhaustively to avoid payment on inflated claims, Phoenix was able to avoid unnecessary costs and delay by permitting recovery of \$20 each day.

D. Plaintiff's Only Case In Support Of Her Position Is Not On Point.

Plaintiff bases her argument on one case from New Jersey, Gulla v. Allstate Insurance Co., 180 N.J. Super 413, 434 A.2d 1158 (N.J. 1981), which has not since been cited in other decisions. Plaintiff argues that the Utah statute should be interpreted to provide an "aggregate limit," which would permit her to recover \$20.00 per day even for days in which no service was rendered or expense was incurred.

In Gulla, the statute provided for recovery of "necessary and reasonable expenses incurred for such substitute essential services" subject to a limit of \$12 per day and \$4380 over the course of the injured person's life. N.J.S.A. § 39:6A-4(c). By contrast, Utah's statute permits recovery for both expenses actually incurred and other services actually rendered, "not exceeding \$20 per day for a maximum of 365 days." Utah Code Ann. § 31A-22-307(1)(b)(ii). Under the New Jersey approach, necessary and reasonable expenses may be reimbursed to permit:

. . . a recovery of either \$12 a day for each day of the disability, whether or not payment for

services was made on a daily basis, or \$4380.00, whichever is less.

434 A.2d at 1160 (emphasis in original).

There is an important difference between the New Jersey statute interpreted in Gulla and Utah's statute. The New Jersey statute only refers to reimbursement of expenses incurred, with no provision for payment for services gratuitously provided, as Utah's statute permits. That broader remedial purpose in Utah's statute requires strict adherence to the statutory language. Unlike expenses, which are relatively easy to verify, the extent of services rendered for which no payment was made is inherently difficult to substantiate. The Utah Legislature chose to require payment for gratuitous services rendered, but it also imposed an upper limit on the amount allowed each day. To eliminate the protection afforded by the statutory daily limit would upset the balance established by the Legislature, and encourage carriers to spend additional time and money investigating special damage allowance claims to avoid incurring unnecessary expense, which would effectively delay the payment of and increase the cost of PIP benefits for everyone.

As the Utah Supreme Court has stated:

. . . insurance is a business, not a philanthropy. There can be no free gifts or benefactions. In the long run premiums must pay for losses; and therefore, increases in premiums must and will be correlated to the extent of the coverage. . . . Accordingly, a seeming generosity in broadening coverage in an individual situation, would be no favor to policyholders generally, nor to the public.

Jamison, supra, 559 P.2d at 960.

Plaintiff's interpretation is cumbersome, leads to uncertainty, delay, and increased expense and cost. By contrast, the decision of the court below gives meaning to all of the statute, effectuates the stated purposes of the No-Fault Act, and provides a simple, fast, and definite method to pay the PIP special damages allowance. Utah courts have not adopted the "aggregate limit" view in conjunction with Title 31A, and have rejected automatic payments under its predecessor statute. There is no Utah authority to permit payments in excess of the amounts actually incurred in a given day and they should not be permitted. The District Court's rejection of plaintiff's attempt to reach beyond the statutory language was correct and should be affirmed.

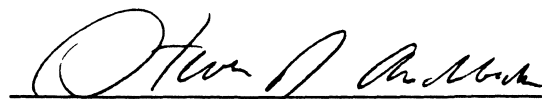
#### CONCLUSION

In interpreting the No-Fault Act, the Court must give effect to the plain language of the statute, and seek to act consistently with the stated legislative intent. A "liberal" interpretation of the statute does not always compel broader coverage, especially where, as here, such an interpretation would increase costs contrary to the original legislative intent, and lead to delays, uncertainty, and confusion. Plaintiff's interpretation provides no method to cut off the carrier's liability short of the 365 day limit, would engender unnecessary disputes between claimants and insurers, and would upset the

legislative plan which provides for limited payment of gratuitously rendered services. The District Court's ruling avoids these problems, permits the payment of the definite sums provided for by the statute, and should be affirmed.

DATED this 26<sup>th</sup> day of December, 1989

RAY, QUINNEY & NEBEKER



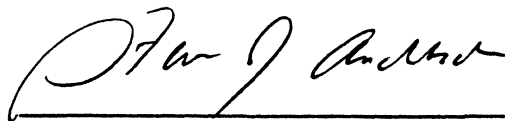
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CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of December, 1989, four true and correct copies of the Brief of Respondent were mailed, postage prepaid, to the following:

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A D D E N D U M

**39:6A-3 MOTOR VEHICLES AND TRAFFIC**

**Historical Note**

The amendment by L.1972, c. 203, before they cancel any required coverage. deleted a requirement in the last paragraph that the consent of the commissioner of insurance be obtained by licensed insurance carriers Effective date of L.1972, c. 70, see Historical Note under § 39:6A-1.

**Cross References**

Compulsory motor vehicle insurance, see §§ 39:6B-1, 39:6B-2.

**Library References**

Automobiles Ⓒ43.

C.J.S. Motor Vehicles § 110.

**39:6A-4. Personal injury protection coverage, regardless of fault**

Every automobile liability insurance policy insuring an automobile as defined in this act against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of ownership, operation, maintenance or use of an automobile shall provide additional coverage, as defined herein below, under provisions approved by the Commissioner of Insurance, for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustained bodily injury as a result of an accident involving an automobile, to other persons sustaining bodily injury while occupying the automobile of the named insured or while using such automobile with the permission of the named insured and to pedestrians, sustaining bodily injury caused by the named insured's automobile or struck by an object propelled by or from such automobile. "Additional coverage" means and includes:

**a. Medical expense benefits.** Payment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident. In the event of death, payment shall be made to the estate of the decedent.

**b. Income continuation benefits.** The payment of the loss of income of an income producer as a result of bodily injury disability, subject to a maximum weekly payment of \$100.00, per week. Such sums shall be payable during the life of the injured person and shall be subject to an amount or limit of \$5,200.00, on account of injury to any one person, in any one accident.

**c. Essential services benefits.** Payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses incurred for such substitute essential services ordinarily performed by the injured person for himself, his family and members of the family residing in the household, subject to an amount or limit of \$12.00 per day. Such benefits shall be payable during the life of the injured person and shall be subject to an amount or limit of \$4,380.00, on account of injury to any one person in any one accident.

**d. Survivor benefits.** In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under section 4 of this act,<sup>1</sup> the maximum amount of benefits which could have been paid to the income producer, but for his death, under section 4 b. shall be paid to the surviving spouse, or in the event there is no surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer.

In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling such person to benefits under section 4 c. of this act, the maximum amount of benefits which could have been paid such person, under section 4 c., shall be paid to the person incurring the expense of providing such essential services.

**e. Funeral expenses benefits.** All reasonable funeral, burial and cremation expenses, subject to a maximum benefit of \$1,000.00, on account of the death to any one person in any one accident shall be payable to decedent's estate.

L.1972, c. 70, § 4. Amended by L.1972, c. 203, § 3, eff Dec 26, 1972

<sup>1</sup> This section

#### Historical Note

As originally added by L 1972, c 70, the definition of "survivor benefits" read as follows

"d Survivor benefits In the event of the death of an income producer or one performing essential services as a result of injuries sustained in an automobile accident, the benefits that would have been paid to the injured person but for his death under section 4a, b, and c, shall be paid to the surviving spouse

dependent upon the deceased for such income or essential services, or in the event there is no dependent surviving spouse, then to the surviving children dependent upon the deceased for such income or essential services "

The amendment by L 1972, c 203, allowed for payment of benefits to persons injured as a result "of an accident involving an automobile" rather

clude: Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico and South Carolina.

**Cross-Reference.**

Safety Responsibility Act, 14-12-1 et seq.

**Law Reviews.**

No-Fault Automobile Insurance in Utah—State Constitutional Issues, 1970 Utah L. Rev. 248.

Compensation Systems and Utah's No-Fault Statute, 1973 Utah L. Rev. 383.

Countrywide Overview of Automobile No-Fault Insurance, 23 Defense L. J. 443 (1974).

**31-41-2. Purpose of act—Property damage claims not affected.**—The purpose of this act is to require the payment of certain prescribed benefits in respect to motor vehicle accidents through either insurance or other approved security but on the basis of no fault, preserving, however, the right of an injured person to pursue the customary tort claims where the most serious types of injuries occur. The intention of the legislature is hereby to possibly stabilize, if not effectuate certain savings in, the rising costs of automobile accident insurance and to effectuate a more efficient, equitable method of handling the greater bulk of the personal injury claims that arise out of automobile accidents, these being those not involving great amounts of damages. This act is not designed to have any effect on property damage claims.

History: L. 1973, ch. 55, § 2.

See Am. Jur. 2d, No-Fault Insurance §§ 1-34, when published.

**Collateral References.**

Insurance—4.1.

44 C.J.S. Insurance § 64.

Validity and construction of "no-fault" automobile insurance plans, 42 A. L. R. 3d 229.

**31-41-3. Definition of terms.**—As used in this act:

(1) "Motor vehicle" means any vehicle of a kind required to be registered under Title 41, but excluding, however motorcycles.

(2) "Person" includes every natural person, firm, partnership, association, corporation, or any governmental entity, or agency of it.

(3) "Owner" means a person who holds the legal title to a motor vehicle, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for purposes of this act.

(4) "Insured" means the named insured, the spouse or other relative of the named insured who reside in the same household as the named insured, including those who usually make their home in the same household but temporarily live elsewhere, or any person using the described motor vehicle with the permission, either expressed or implied, of the owner.

(5) "Occupying" means being in or upon a motor vehicle as a passenger or operator or engaged in the immediate acts of entering, boarding, or alighting from a motor vehicle.

(6) "Pedestrian" means any natural person not occupying or riding upon a motor vehicle.

(7) "Department" means the Utah insurance department.

History: L. 1973, ch. 55, § 3.



**31-41-6. Minimum benefits — Determination of reasonable value of medical expenses—Medical expenses include nonmedical remedial care and treatment in accordance with religious method—Deductible amounts allowed.—**(1) Every insurance policy or other security complying with the requirements of subsection (1) of section 31-41-5 shall provide personal injury protection providing for payments to the insured and to all other persons suffering personal injury arising out of an accident involving any motor vehicle, except as otherwise provided in this act, in at least the following minimum amounts:

(a) Medical benefits: the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, and rehabilitation services, including prosthetic devices, necessary ambulance, hospital, and nursing services not to exceed a total of \$2,000 per person, as determined under subsection (2) of this section.

(b) Disability benefits: (i) 85% of any loss of gross income and loss of earning capacity per person from inability to work during a period commencing not later than three days after the date of the injury and continuing for a maximum of 52 consecutive weeks thereafter, not to exceed a total of \$150 per week, but if the person's inability to work shall so continue for in excess of a total of two consecutive weeks after the date of the injury, this three-day elimination period shall not be applicable; and (ii) in lieu of reimbursement for expenses which would have been reasonably incurred for services that, but for the injury, the injured person would have performed for his household and regardless of whether any of these expenses are actually incurred, an allowance of \$12 per day commencing not later than three days after the date of the injury and continuing for a maximum of 365 days thereafter, but if the person's inability to perform these services shall so continue for in excess of a total of fourteen days after the date of the injury, this three-day elimination period shall not be applicable.

(c) Funeral benefits: funeral, burial, or cremation benefits not to exceed a total of \$1,000 per person.

(d) Survivor benefits: compensation on account of death of a person, payable to his heirs, in the total of \$2,000.

(2) To determine the reasonable value of the medical expenses provided for in subsection (1) of this section and in subsection (1) (e) of section 31-41-9, the department shall conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state for the purpose of assigning a unit value and median charge to each type of service and accommodation. In conducting the study, the department shall consult with appropriate public and private medical and health agencies. Upon completion of the study, the department shall prepare and publish a relative value study which sets forth the unit value and median charge assigned to each type of service and accommodation. The value of any service or accommodation shall be determined by applying the unit value and median charge assigned to the service or accommodation under

the relative value study. If a service or accommodation is not assigned a unit value or median charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state. Nothing herein shall preclude the department from adopting a schedule already established if it meets the requirement of this subsection. In disputed cases, a court on its own motion or the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of their medical expenses.

(3) Medical expenses as provided for in subsection (1) of this section and in subsection (1) (e) of section 31-41-9 shall include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) At appropriately reduced premium rates insurers may offer deductibles in amounts not exceeding \$500 per accident in respect to the insurance coverages required by this act applicable, however, only to claims of the insured.

(5) Nothing contained in this act shall be construed to prohibit an insurance policy from providing coverage for any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

History: L. 1973, ch. 55, § 6.

44 C.J.S. Insurance § 64.

Collateral References.

7 Am. Jur. 2d 298, Automobile Insurance § 6.

Insurance 11.1.

**31-41-7. Personal injuries covered—Primary coverage—Reduction of benefits.**—(1) The coverages described in section 31-41-6 shall be applicable to:

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

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

(2) When a person injured is also an insured party under any other policy, including those complying with this act, primary coverage shall be afforded by the policy insuring the motor vehicle out of the use of which the accident arose.

(3) The benefits payable to any injured person under section 31-41-6 shall be reduced by:

(a) Any benefits which that person receives or is entitled to receive as a result of an accident covered in this act under any workmen's compensation plan or any similar statutory plan; and

(b) Any amounts which that person receives or is entitled to receive from the United States or any of its agencies because of military enlistment, duty or service.

**31A-1-102. Purposes.**

The purposes of the Insurance Code are to:

- (1) ensure the solidity of insurers doing business in Utah;
- (2) ensure that policyholders, claimants, and insurers are treated fairly and equitably;
- (3) ensure that Utah has an adequate and healthy insurance market, characterized by competitive conditions, the spirit of innovation, and the exercise of initiative;
- (4) provide for an insurance department that is expert in the field of insurance and able to enforce the Insurance Code effectively;
- (5) encourage cooperation between the Insurance Department and other Utah regulatory bodies, as well as other federal and state governmental entities;
- (6) preserve and improve state regulation of insurance;
- (7) maintain freedom of contract and enterprise;
- (8) encourage self regulation of the insurance industry;
- (9) encourage loss prevention as part of the insurance industry;
- (10) keep the public informed on insurance matters; and
- (11) achieve other purposes stated elsewhere in the Insurance Code.

**History:** C. 1953, 31A-1-102, enacted by  
L. 1985, ch. 242, § 6.  
**Insurance Code.** — See § 31A-1-101.

**31A-1-103. Scope and applicability of title.**

- (1) This title does not apply to:
  - (a) retainer contracts made by attorneys-at-law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters;
  - (b) arrangements for providing benefits that do not exceed a limited amount of consultations, advice on simple legal matters, either alone or in combination with referral services, or the promise of fee discounts for handling other legal matters;
  - (c) limited legal assistance on an informal basis involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship; or
  - (d) legal assistance by employee organizations to their members in matters relating to employment.
- (2) This title restricts otherwise legitimate business activity. What this title does not prohibit is permitted unless contrary to other provisions of Utah law.

by insured while occupying "owned" vehicle not insured by policy, 30 A.L.R.4th 172. Validity, construction, and effect of statute establishing compensation for claims not paid because of insurer's insolvency, 30 A.L.R.4th 1110.

### **31A-22-306. Personal injury protection.**

Personal injury protection under Subsection 31A-22-302(2) provides the coverages and benefits described under § 31A-22-307 to persons described under § 31A-22-308, but is subject to the limitations, exclusions, and conditions set forth in § 31A-22-309.

**History:** C. 1953, 31A-22-306, enacted by L. 1985, ch. 242, § 27; L. 1986, ch. 204, § 158. ment, effective July 1, 1986, substituted "31A-22-302(2)" for "31A-22-302(3)" and "in" for "under."

**Amendment Notes.** — The 1986 amend-

#### **COLLATERAL REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d Insurance § 1689. fault" or personal injury protection (PIP) coverages in automobile liability policy or policies, 29 A.L.R.4th 12.  
**C.J.S.** — 44 C.J.S. Insurance § 64.  
**A.L.R.** — Combining or "stacking" of "no **Key Numbers.** — Insurance ⇌ 11.1.

### **31A-22-307. Personal injury protection coverages and benefits.**

(1) Personal injury protection coverages and benefits include:

(a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, rehabilitation (which includes prosthetic devices), ambulance, hospital, and nursing services, not to exceed a total of \$3,000 per person;

(b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of earning capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, except that this benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks after the date of injury; and

(ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks;

(c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

(d) compensation on account of death of a person, payable to his heirs, in the total of \$3,000.

(2) To determine the reasonable value of the medical expenses provided for in Subsection (1) and under Subsection 31A-22-309(1)(e), the commissioner shall, at least once each odd-numbered year, conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state to assign a unit value and median charge to each type of service and accommodation. In conducting the study, the department shall consult with appropriate public and private medical and health agencies. Upon completion of the study, the department shall prepare and publish a relative value study which sets forth the unit value and median charge assigned to each type of service and accommodation. The value of any service or accommodation is determined by applying the unit value and median charge assigned to the service or accommodation under the relative value study. If a service or accommodation is not assigned a unit value or median charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state. This subsection does not preclude the department from adopting a schedule already established or a schedule prepared by persons outside the department, if it meets the requirements of this subsection. In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical expenses.

(3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309(1)(e) include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) At appropriately reduced premium rates, insurers may offer deductibles in amounts not exceeding \$500 per accident with respect to the insurance coverages required under this section. However, the deductible is applicable only to claims of the named insured and persons living in his household.

(5) This section does not prohibit the issuance of policies of insurance providing coverages greater than the minimum coverage required under this chapter nor does it require the segregation of those minimum coverages from other coverages in the same policy.

**History:** C. 1953, 31A-22-307, enacted by L. 1985, ch. 242, § 27; L. 1986, ch. 204, § 159.

**Amendment Notes.** — The 1986 amend-

ment, effective July 1, 1986, inserted "prosthetic devices" in Subsection (1)(a), and made minor stylistic changes throughout the section.

### **78-2-1. Number of justices — Term — Chief justice and associate chief justice — Selection and functions.**

(1) The Supreme Court consists of five justices.

(2) A justice of the Supreme Court shall be appointed initially to serve until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a justice of the Supreme Court is ten years and commences on the first Monday in January, next following the date of election. A justice whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified.

(3) The justices of the Supreme Court shall elect a chief justice from among the members of the court by a majority vote of all justices. The term of the office of chief justice is four years. The chief justice may not serve successive terms. The chief justice may resign from the office of chief justice without resigning from the Supreme Court. The chief justice may be removed from the office of chief justice by a majority vote of all justices of the Supreme Court.

(4) If the justices are unable to elect a chief justice within 30 days of a vacancy in that office, the associate chief justice shall act as chief justice until a chief justice is elected under this section. If the associate chief justice is unable or unwilling to act as chief justice, the most senior justice shall act as chief justice until a chief justice is elected under this section.

(5) In addition to the chief justice's duties as a member of the Supreme Court, the chief justice has additional duties as provided by law.

(6) There is created the office of associate chief justice. The term of office of the associate chief justice is two years. The associate chief justice may serve in that office no more than two successive terms. The associate chief justice shall be elected by a majority vote of the members of the Supreme Court and shall be allocated duties as the chief justice determines. If the chief justice is absent or otherwise unable to serve, the associate chief justice shall serve as chief justice. The chief justice, where not inconsistent with law, may delegate responsibilities to the associate chief justice.

**History:** L. 1951, ch. 58, § 1; C. 1943, Supp., 104-2-1; L. 1969, ch. 247, § 1; 1986, ch. 47, § 40; 1988, ch. 248, § 4.

**Amendment Notes.** — The 1988 amendment, effective April 25, 1988, in Subsection (2), rewrote the second sentence which read

"Thereafter, the term of office of a justice of the Supreme Court is ten years and until his successor is appointed and approved in accordance with Section 20-1-7.1" and, in Subsection (6), substituted "determines" for "decides" at the end of the fourth sentence.

### **78-2-2. Supreme Court jurisdiction.**

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;

- (d) final orders of the Judicial Conduct Commission;
  - (e) final orders and decrees in formal adjudicative proceedings originating with:
    - (i) the Public Service Commission;
    - (ii) the State Tax Commission;
    - (iii) the Board of State Lands and Forestry;
    - (iv) the Board of Oil, Gas, and Mining; or
    - (v) the state engineer;
  - (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e);
  - (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
  - (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
  - (i) appeals from the district court involving a conviction of a first degree or capital felony; and
  - (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.
- (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:
- (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;
  - (b) election and voting contests;
  - (c) reapportionment of election districts;
  - (d) retention or removal of public officers;
  - (e) general water adjudication;
  - (f) taxation and revenue; and
  - (g) those matters described in Subsection (3)(a) through (f).
- (5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).
- (6) The Supreme Court shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings.

**History:** C. 1953, 78-2-2, enacted by L. 1986, ch. 47, § 41; 1987, ch. 161, § 303; 1988, ch. 248, § 5; 1989, ch. 67, § 1.

**Amendment Notes.** — The 1988 amendment, effective April 25, 1988, substituted "formal adjudicative proceedings" for "cases" in Subsection (3)(e); added Subsection (3)(f); redesignated former Subsections (3)(f) to (3)(i) accordingly; substituted "(i)" for "(h)" at the end

of Subsection (4)(g); and made minor stylistic changes.

The 1989 amendment, effective April 24, 1989, added "and Forestry" at the end of Subsection (3)(e)(iii); rewrote Subsection (4)(a) which read "first degree and capital felony convictions"; substituted "(f)" for "(i)" at the end of Subsection (4)(g); and made minor stylistic changes.

### 78-2a-3. Court of Appeals jurisdiction.

- (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
  - (a) to carry into effect its judgments, orders, and decrees; or
  - (b) in aid of its jurisdiction.
- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
  - (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;
  - (b) appeals from the district court review of adjudicative proceedings of agencies of political subdivisions of the state or other local agencies;
  - (c) appeals from the juvenile courts;
  - (d) appeals from the circuit courts, except those from the small claims department of a circuit court;
  - (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
  - (f) appeals from district court in criminal cases, except those involving a conviction of a first degree or capital felony;
  - (g) appeals from orders on petitions for extraordinary writs involving a criminal conviction, except those involving a first degree or capital felony;
  - (h) appeals from district court involving domestic relations cases, including but not limited to divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;
  - (i) appeals from the Utah Military Court; and
  - (j) cases transferred to the Court of Appeals from the Supreme Court.
- (3) The Court of Appeals, upon its own motion only and by the vote of four judges of the court, may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.
- (4) The Court of Appeals shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings.

**History:** C. 1953, 78-2a-3, enacted by L. 1986, ch. 47, § 46; 1987, ch. 161, § 304; 1988, ch. 73, § 1; 1988, ch. 210, § 141; 1988, ch. 248, § 8.

**Amendment Notes.** — The 1988 amendment by Laws 1988, Chapter 73, effective April 25, 1988, inserted subsection designations (a) and (b) in Subsection (1); inserted "resulting from formal adjudicative proceedings" in Subsection (2)(a); substituted "state agencies" for "state and local agencies" in Subsection (2)(a); substituted "informal adjudicative proceedings of the agencies" for "them" in Subsection (2)(a); deleted "notwithstanding any other provision of law" at the end of Subsection (2)(a); inserted Subsection (b); redesignated former Subsections (2)(b) to (2)(h) as Subsections (2)(c) to (2)(i); added "except those from the small claims department of a circuit court" at the end

of Subsection (2)(d); and made minor stylistic changes.

The 1988 amendment by Laws 1988, Chapter 210, effective April 25, 1988, added Subsection (2)(h) and redesignated former Subsection (2)(h) as Subsection (2)(i).

The 1988 amendment by Laws 1988, Chapter 248, effective April 25, 1988, in Subsection (2)(a), rewrote the phrase before "except" which had read "the final orders and decrees of state and local agencies or appeals from the district court review of them"; deleted "notwithstanding any other provision of law" at the end of Subsection (2)(a); inserted present Subsection (2)(b); designated former Subsections (2)(b) to (2)(h) as Subsections (2)(c) to (2)(i); and substituted "first degree or capital felony" for "first or capital degree felony" in present Subsection (2)(f).