

1992

Jorgina Chambers and Farmers Insurance Exchange v. Agency Rent-A-Car, Inc., and Royal Indemnity Company : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 920820

IN THE UTAH COURT OF APPEALS

JORGINA CHAMBERS and
FARMERS INSURANCE EXCHANGE,

Plaintiffs and Appellees,

vs.

AGENCY RENT-A-CAR, INC., and
ROYAL INDEMNITY COMPANY,

Defendants and Appellees.

Case No. 92-0820 CA

Priority No. 15

BRIEF OF APPELLEES

APPEAL FROM THE THIRD DISTRICT COURT, SALT LAKE COUNTY
JUDGE JAMES S. SAWAYA, PRESIDING

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	:	
AGENCY RENT-A-CAR, INC., and	:	Priority No. 15
ROYAL INDEMNITY COMPANY,	:	
	:	
Defendants and Appellees.	:	

BRIEF OF APPELLEES

JURISDICTION

Jurisdiction in this court is proper pursuant to Utah Code Ann. § 78-2-2(3) (j) (1953, as amended).

ISSUES PRESENTED ON APPEAL

1. Are self insureds required by Utah law to provide liability coverage for their vehicles and to provide primary coverage for their vehicles when use of their vehicles results in damages?

2. What is the extent of liability coverage owed by self insureds?

DETERMINATIVE STATUTES

The following statutes, as they existed in December, 1989 control this case: Utah Code Ann. §§ 31A-22-302, 31-A-22-303, 31A-22-304, 31-22-306 through 309, 41-12a-301, 41-12a-401 and 41-12a-407. The language of these statutes is reproduced at the Addendum to this Brief.

STATEMENT OF THE CASE

Nature of the Case

This is an action for declaratory relief filed by plaintiffs to determine the obligations of self-insureds under Utah's financial responsibility laws.

Course of Proceedings

This appeal is from a final judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, wherein the Court granted summary judgment on plaintiffs' claim against Agency Rent-a-Car, a self-insured under Utah's financial responsibility laws, determining Agency's obligation under the financial responsibility laws of the State of Utah.

Statement of Facts

The parties stipulated to the following statement of material facts: (Agency's statement of facts omits several of the stipulated material facts.)

1. Plaintiff, Jorgina Chambers, is a resident of Salt Lake County, State of Utah. (R. 21, 39, 40)

2. Plaintiff, Farmers Insurance Exchange, is a

reciprocal or inter-insurance exchange organized and existing under and by virtue of the laws of the State of California and authorized to engage in the insurance business in the State of Utah. (R. 21, 22)

3. Defendant, Agency Rent-a-Car, Inc., is a Delaware corporation, authorized to conduct the business of renting automobiles in the State of Utah. (R. 22)

4. Defendant, Royal Indemnity Company, is an insurance company authorized under the laws of the State of Utah to conduct an insurance business in the State of Utah. (R. 22)

5. On or about December 13, 1989, Jorgina Chambers rented a vehicle, a 1989 Dodge Aries, from Agency Rental Inc. (R. 22)

6. At that time, Jorgina Chambers owned a 1985 Chevrolet Sprint which was insured under a policy issued by Farmers Insurance Exchange with policy limits of \$20,000.00 for injury to one person, \$40,000.00 for injuries per occurrence and \$10,000.00 medical limits. (R. 22)

7. Agency Rental, Inc. at all times relevant hereto is a qualified self-insurer under the provisions of Utah Code Ann. § 41-12a-406 (1986) and was certified as such by the Utah Department of Public Safety. (R. 22)

8. On December 14, 1989, a collision occurred at the intersection of 4505 South and 1175 West in Salt Lake County, which involved the 1989 Dodge owned by Agency Rental, Inc. and driven by Jorgina Chambers, and a vehicle driven by A.C. Gomez.

(R. 23)

9. A.C. Gomez, at all times relevant hereto, was insured under a policy of automobile liability insurance issued by Royal Indemnity Company. (R. 23)

10. Morgan Chambers was a passenger in the vehicle driven by Jorgina Chambers and owned by Agency Rent-a-Car. (R. 23)

11. Geraldine Gomez was a passenger in the vehicle driven by A.C. Gomez. (R. 23)

12. As a result of the accident, Morgan Chambers has sustained catastrophic injuries. Her medical expenses to date exceed \$70,000.00. (R. 23)

13. Farmers Insurance Exchange is willing to pay its policy limits to settle the claims of Morgan Chambers, but maintains that Agency Rent-a-Car owes primary coverage for this claim and must pay its limits first. Agency Rent-a-Car denies that it owes primary coverage for this claim. (R. 23, 39, 40)

14. Farmers Insurance Exchange has paid personal injury protection benefits to or on behalf of Jorgina Chambers and Morgan Chambers. (R. 23, 39, 40)

15. Royal Indemnity Company has made a demand upon Farmers Insurance Exchange for reimbursement for PIP amounts paid out to or on behalf of A.C. Gomez and Geraldine Gomez for injuries sustained in this accident. (R. 24, 39, 40)

16. Farmers Insurance Exchange has made a demand upon Agency Rent-a-Car to pay personal injury protection benefits to

persons injured in this accident. Agency Rent-a-Car has admitted that it is primary for personal injury protection benefits and has sent an application to Jorgina Chambers. (R. 13, 24, 39, 40)

17. Farmers Insurance Exchange has also demanded pursuant to the provisions of § 41-12a-407 that Agency Rent-a-Car make liability limits of \$80,000.00 available to settle any claims against Jorgina Chambers arising out of this accident. (R. 24, 39, 40)

18. Farmers Insurance Exchange, through its representative, is trying to settle the claims against Jorgina Chambers as a result of this accident, however, Agency Rent-a-Car owes primary coverage and they have refused to participate in any settlement and deny that they owe any liability coverage. Agency has admitted that it owes primary coverage for personal injury protection. (R. 13, 24, 39, 40)

SUMMARY OF ARGUMENT

Agency Rent-a-Car, Inc., is required to comply with Utah's Financial Responsibility of Motor Vehicles Owners and Operators Act by either insuring or self-insuring its fleets for liability coverage and personal injury protection coverage. It is required to afford liability coverage to all permissive users of its vehicles. It is further required by Utah law to afford primary coverage when use of its vehicles results in damages.

ARGUMENT

Introduction

As indicated in the Statement of Facts above, on December 14, 1989, a collision occurred involving an automobile owned by Agency Rent-a-Car, Inc., (hereinafter "Agency") and driven by Jorgina Chambers and a vehicle driven by A.C. Gomez. Morgan Chambers, six years old at the time of this accident, was a passenger in the vehicle driven by her mother and owned by Agency. As a result of the accident, Morgan Chambers sustained catastrophic injuries.

At the time of this accident, Jorgina Chambers owned a vehicle insured under a policy of insurance issued by Farmers Insurance Exchange with policy limits of \$20,000.00 for injury to one person, \$40,000.00 per occurrence and \$10,000.00 medical limits. Farmers Insurance Exchange has paid personal injury benefits on behalf of both Morgan Chambers and Jorgina Chambers. Farmers Insurance Exchange is willing to pay its policy limits of \$20,000.00 to settle the claims of Morgan Chambers. Agency however, has refused to participate in any settlement and has denied that it owes any liability coverage at all.

Upon a demand from Farmers Insurance Exchange that it pay personal injury protection benefits to persons injured in this accident, Agency has admitted that it owes personal injury protection benefits and that it is primary for personal injury protection. (R. 13, 24, 39) This issue, therefore, is not before this Court.

This lawsuit seeks to settle the claims of Morgan Chambers and to compensate her for the catastrophic injuries which she sustained in the accident of December 14, 1989 while a passenger in Agency's vehicle. Farmers Insurance Exchange is willing to pay its policy limits to settle the claims of Morgan Chambers against Jorgina Chambers. Agency, however, has denied that it owes any liability coverage for this accident. The issue presented here is whether, Agency, as a self-insured under the provisions and protections of Utah law, is required to afford liability coverage to permissive users, such as Jorgina Chambers. Agency has claimed that it is not required to afford such coverage to Ms. Chambers and has refused to participate in the settlement of Morgan Chambers' claims.

I. AGENCY RENT-A-CAR IS REQUIRED TO COMPLY WITH UTAH LAW BY PROVIDING LIABILITY COVERAGE AND PERSONAL INJURY PROTECTION COVERAGE FOR ITS VEHICLES AND BY PROVIDING PRIMARY COVERAGE WHEN USE OF ITS VEHICLES RESULTS IN DAMAGES.

In Utah, "every resident owner of a motor vehicle" is required to comply with the Financial Responsibility of Motor Vehicles Owners and Operators Act by either insuring or self-insuring their fleets for liability coverage. (Utah Code Ann. §41-12a-301 (1). The means of providing proof of this owners' and operators' security are set forth in Utah Code Ann. § 41-12a-401. That section provides that the requirement of proof of owner's or operator's security may be satisfied by any of the following:

- (a) A certificate of insurance under § 41-12a-402 or 41-12a-403;

- (b) A copy of a surety bond under § 41-12a-405;
- (c) A certificate of deposit or security issued by the State Treasurer under § 41-12a-406; or,
- (d) A certificate of self-funded coverage under § 41-12a-407.

Agency, a corporation doing business in the State of Utah, is, therefore, required to comply with the financial responsibility laws of this state by either insuring or self-insuring its fleet for liability coverage. Agency has elected to comply with this act by obtaining a certificate of self-funded coverage under the provisions of Utah Code Ann. § 41-12a-407.

In order to obtain its certificate of self-funded coverage, Agency must comply with the requirements set forth in subsection (1) of Utah Code Ann. § 41-12a-407. The version of that subsection in effect at the time of the December 14, 1989 accident read as follows:

The department may, upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has, and will continue to have, the ability to pay judgments in and an amount equal to twice the single limit under subsection 31A-22-304 (2). Persons holding a certificate of self-funded coverage under this subsection shall pay benefits to persons injured from the self-funded persons operation, maintenance, and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under §31A-22-302. (Emphasis added)

In 1991, the legislature amended the statute to provide a different scheme for eligibility for self-funded coverage. The

requirement that persons holding certificates of self-funded coverage shall pay benefits to persons injured from the self-funded persons operation, maintenance and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under Utah Code Ann. § 31A-22-302, however, was maintained.

Utah Code Ann. § 31A-22-302 provides as follows:

- (1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:
 - (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304; and
 - (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4).
- (2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.
- (3) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators. These owners and operators are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles.

Utah Code Ann. § 31A-22-303 sets forth the requirements of motor vehicle liability coverage. Included therein is the requirement that the policy, if an owner's policy, designate all motor vehicles on which coverage is granted, insure the person

named in the policy, and "insure any other person using any named vehicle with the express or implied permission of the named insured". (Emphasis added.)

Under the provisions of Utah Code Ann. § 41-12a-407, self-insureds, such as Agency, are required to provide the same coverages as an insurer issuing a policy would. This includes affording liability coverage for damages inflicted by themselves and by permissive users of their vehicles and affording personal injury protection benefits as set forth in § 31A-22-306 through 31A-22-309.

The obligation of self-insureds to afford liability coverage for permissive users of their vehicles is well established in Utah. In the case of Foster v Salt Lake County, 712 P.2d 234 (Utah 1985), the Supreme Court examined the predecessor statutes to the Financial Responsibility of Motor Vehicles Owners and Operators Act and concluded that self-insureds were required to afford permissive users of motor vehicles liability coverage at minimum limits. The Court noted the requirement in the Safety Responsibility Act (Utah Code Ann. § 41-12-21) that every owner's policy of liability insurance shall insure the "person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured..." Id. Page 227 At that time, the Utah Automobile No-fault Insurance Act (Utah Code Ann. §31-41-1 et. seq.) required all owners of motor vehicles to maintain security in effect continuously throughout

the registration of the motor vehicle. Owners were given the option of providing security by insurance or "affording security equivalent to that offered by a policy of insurance". Self-insureds or those that opted to afford security equivalent to that offered by a policy of insurance were required to afford liability coverage to permissive users of their vehicles.

Judge J. Thomas Greene of the Federal District Court for the District of Utah reached the same conclusion in the case of Lane v. Honeywell, Inc. 663 F.Supp. 370 (D. Utah 1987). Judge Greene also examined the previous Utah law and concluded that "public policy as expressed in Utah law is that self-insurers must provide security for damages inflicted by themselves and by permissive users of their vehicles". Id. Page 375

In addition to the requirement that self-insureds, such as Agency, afford liability coverage to permissive users of their vehicles, is the requirement that Agency afford personal injury protection as set forth in § 31A-22-306 through 31A-22-309. Utah Code Ann. § 31A-22-306 provides the following:

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

Agency is required to afford personal injury protection coverage and in providing that required coverage, is subject to the conditions set forth in § 31A-22-309. Subsection (4) 31A-22-309 provides that:

When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle use during the accident.

Agency, required under the provisions of Utah Code Ann. § 41-12a-407 to pay benefits to persons injured from the use of its motor vehicles "as would an insurer issuing a policy to the self-funded person", is mandated by statute to afford liability coverage and personal injury protection coverage. It is also required by statute to afford primary coverage on the vehicles which it has elected to self-insure. Agency has conceded that it owes primary coverage for personal injury protection benefits. The language of Utah Code Ann. § 31A-22-309(4), however, does not limit its application to personal injury protection benefits or even to policies which affords such benefits. The statute states that primary coverage is given by the policy insuring the motor vehicle in use during the accident, and not merely that primary coverage for personal injury protection is given by the policy insuring the vehicle in use during the accident.

This statutory mandate of Utah Code Ann. § 31A-22-309(4) that Agency afford primary liability and personal injury protection coverage for its vehicles is a restatement of a well established principle in Utah case law. The Utah Supreme Court has held on numerous occasions "that the insurance coverage on the car being driven is primary and that of the driver is excess". Schippers v. State Farm Mutual Automobile Insurance, 30 Utah 2d 404, 518 P.2d 1099 (1974); Lyon v. Hartford Accident and

Indemnity Company, 25 Utah 2d. 311, 480 P.2d 730 (1971); Christensen v. Farmers Insurance Exchange, 21 Utah 2d 194 443 P.2d 385 (1968); Russell v. Paulson 18 Utah 2d 157, 417 P.2d 658 (1966).

Agency has cited decisions from foreign jurisdictions which distinguish between self insurance and insurance. None of these cases, however, address the statutory scheme for owners of vehicles in Utah.

Agency cites the case of Hearty v. Harris, 574 So. 2d 123 (La 1991), as one which concludes coverages such as uninsured motorist coverage and omnibus clauses that are required in insurance policies are not required of self-insurers. The Louisiana Court, however, states that such coverage is not required of self-insureds in Louisiana because the legislature has not mandated that self-insureds provide such coverage. In Utah, however, self-insured owners of vehicles are mandated by statute to provide liability coverage for permissive users, personal injury protection coverage and primary coverage for their vehicles involved in accidents. As stated by Agency on page 10 of its Brief, Agency's liability in Utah "arises by operation of statute rather than pursuant to a risk shifting agreement between Agency and its renter".

Similar issues were addressed by the South Carolina Supreme Court in the case of Southern Homes Insurance v. Burdettes Leasing Service, Inc., 234 S.E. 2d 870 (1977). In that case, the insurance company insuring a driver of a rental vehicle

sought indemnification from the rental company for damages paid out by the insurance company as a result of an accident in which the insured was driving a rental vehicle. The Court examined the overall purpose of the motor vehicle financial responsibility law and noted that "public liability insurance not only affords protection to the insured motorist, it serves the public purpose of affording protection to innocent victims of motor vehicle accidents". Id. page 872. Although the Court noted that technically, a self-insurer is not an insurer at all, the Court concluded that "we think it was the intention of the legislature that a self-insured provide the same protection to the public that a statutory liability policy provides. A self-insurer substitutes for an insurance policy to the extent of the statutory policy requirements". The Court held that the auto leasing company did self-insure the operation of its motor vehicles by persons using them with consent and that this protection was primary. "To hold otherwise would negate the intent of the legislature". Id. Page 872

In Southern Home Insurance Company, *Supra.*, the rental company argued that their rental agreement provided that the renters' own insurance would be responsible. The Court rejected this effort on the part of the leasing company to relieve itself of liability imposed by law at least insofar as an injured third party's claim was concerned, by stating "the statute and not the parties determines the rights of injured parties and any contract inconsistent therewith is not binding". Id. page 873.

Efforts by Agency to relieve itself of responsibility and participating in settlement of the claims of Morgan Chambers are contrary to Utah law and similarly, void.

Agency, here, argues that self-funded coverage is not insurance and that "the holder of a certificate of self-funded coverage agrees to respond and pay damages for any injury resulting from its 'operation, maintenance, and use of its motor vehicle.' Operation and use of its motor vehicles includes rental of those motor vehicles to third parties such as Ms. Chambers."¹ Agency goes on to say that it "did not agree with Chambers to indemnify her for her negligence. However, by operation of the statute, Agency is obligated to indemnify third parties for injuries caused by the rental driver to the same extent an insurer would be."²

Agency makes a distinction between the obligation to indemnify Ms. Chambers for her negligence and its obligation to indemnify third parties for injuries caused by Chambers to the same extent an insurer would be. This is a distinction without a difference since Agency has refused to participate in the settlement of the claims of Morgan Chambers.

According to Agency, this appeal raises the issue of whether, in the event "this Court determines that Agency's self-funded coverage is primary, is Agency nevertheless permitted to recover the amount it might ultimately pay from Jorgina Chambers,

¹ Appellant's Brief page 10.

² Appellant's Brief page 10.

pursuant to her contract with Agency." Agency's contract with Chambers is not before the Court nor does Agency offer any support for its claim that in the event this Court determines that Agency self-funded coverage is primary, Agency may recover whatever amount it is required to pay from Jorgina Chambers. Such a finding on the part of this Court, however, would circumvent the determination that Agency's self-funded coverage is primary and render it meaningless.

The trial court in this case correctly concluded that Agency, electing to comply with the Financial Responsibility of Motor Vehicles owners and operators act by obtaining a certificate of self-funded coverage, was required by Utah's law to afford liability coverage and personal injury protection coverage for its vehicles and that that coverage is primary. Agency, therefore, is required to participate in settling the claims of Morgan Chambers against Jorgina Chambers.

II. AGENCY RENT-A-CAR HAS CONCEDED THAT UNDER UTAH LAW IT OWES PERSONAL INJURY PROTECTION BENEFITS AND THAT IT IS PRIMARILY RESPONSIBLE FOR THOSE BENEFITS.

Agency seeks to have this Court address the issue of whether or not the self-funded personal injury protection coverage is primary even though it has already conceded that under Utah law, it is required to afford such benefits and that it is primary for those benefits. In its Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, (R.39, 40), Agency states that "plaintiff's statement at paragraph 16

that Agency has admitted that it is primary for personal injury benefits is correct as far as it goes, but Agency states that it believes the law making Agency primary for personal injury protection benefits ignores the distinctions between insurance and self insurance ...therefore Agency does not admit that it should be primarily liable for those benefits."

Agency claims that the law making it primary for personal injury protection benefits is somehow erroneous. This Court is not the proper forum to decide what should or should not be enacted into law. Moreover, in enacting this statute, Utah's legislature has articulated its public policy of requiring all owners of motor vehicles, regardless of whether they elect to insure or self-insure their vehicles, to afford the same coverage to persons injured through the use of those motor vehicles.

III. AT THE TIME OF THIS ACCIDENT, SELF-INSUREDS, SUCH AS AGENCY RENT-A-CAR, WERE REQUIRED TO AFFORD LIABILITY LIMITS OF \$80,000.00.

Agency, required by Utah's Financial Responsibility of Motor Vehicles Owners and Operators Act, to either insure or self-insure their vehicles, elected to comply with this statute by obtaining a certificate of self-funded coverage under the provisions of Utah Code Ann. § 41-12a-407. In order to obtain the certificate of self-funded coverage, Agency had to meet the requirements set forth in subsection (1) of 41-12a-407.

The version of that subsection in effect at the time of the accident of December 14, 1989 read as follows:

(1) The department may upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has and will continue to have the ability to pay judgments in an amount equal to twice the single limit amount under Subsection 31A-22-304(2). Persons holding a certificate of self-funded coverage under this subsection shall pay benefits to persons injured from the self-funded person's operation, maintenance, and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under Section 31A-22-302.

The legislature amended the statute in 1991 to provide a different scheme for eligibility for self-funded coverage.

At the time of this accident, however, self-insureds were to have the ability to pay judgments in an amount equal to twice the single limit under subsection 31A-22-304 (2). At the time of this accident, subsection 31A-22-304 (2) provided for a single limit of minimum coverage afforded by motor vehicle liability insurance policies in the amount of "\$40,000.00 in any one accident whether arising from bodily injury to or death of others, or from destruction of or damage of property of others". Agency, therefore, was required under the terms of section 41-12a-407 in effect at that time to assume responsibility for liability coverage up to \$80,000.00.

CONCLUSION

Every owner of a motor vehicle in Utah is required to either insure or self-insure its vehicles for liability coverage and personal injury protection coverage. Like all other owners

of motor vehicles, Agency is required to provide liability coverage to permissive users of its vehicles and to provide personal injury protection coverage to persons injured through use of its vehicles and it is required to provide primary coverage when use of its vehicles results in damages. The trial court was correct in its determination that Agency must participate in the settlement of Morgan Chambers' claims for injuries sustained in the accident of December 14, 1989 and its summary judgment should be affirmed.

RESPECTFULLY submitted this 24th day of May, 1993.

HANSON, NELSON, CHIPMAN & QUIGLEY

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May,
1993, I mailed four true and correct copies of the foregoing
Brief of Appellee, postage prepaid, to:

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ADDENDUM

31A-22-302. Required components of motor vehicle insurance policies — Exceptions.

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

(a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304; and

(b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators. These owners and operators are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles.

History: C. 1953, 31A-22-302, enacted by L. 1985, ch. 242, § 27; 1987, ch. 183, § 1.

Amendment Notes. — The 1987 amendment, in Subsection (2), inserted "trailers, and semitrailers"; designated the second and third sentences in former Subsection (2) as Subsec-

tion (3); and, in Subsection (3), in the first sentence inserted "trailer, and semitrailer" and in the second sentence substituted "These" for "Motorcycle" and "any of these vehicles" for "a motorcycle."

NOTES TO DECISIONS

ANALYSIS

Liability of county.

Uninsured motorist coverage.

—Exclusionary clause.

Liability of county.

Liability of county, as self-insurer of own vehicles operated by permissive users, under former law. See *Foster v. Salt Lake County*, 712 P.2d 224 (Utah 1985).

Uninsured motorist coverage.

—Exclusionary clause.

Former § 41-12-21.1, which merely required insurers to offer uninsured motorist coverage

and authorized motorists to waive coverage, did not require them to allow an individual to purchase insurance on one vehicle and obtain coverage on all the other vehicles in his household; a clause excluding such multiple coverage is permissible. *Clark v. State Farm Mut. Auto. Ins. Co.*, 743 P.2d 1227 (Utah 1987).

A policy that covered the insured for any injury caused by an uninsured motorist, excluding therefrom only uninsured "automobiles" owned by the insured, did not exclude uninsured motorist coverage when the insured was operating a motorcycle. *Bear River Mut. Ins. Co. v. Wright*, 770 P.2d 1019 (Utah Ct. App. 1989).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Automobile Insurance § 4.

C.J.S. — 60 C.J.S. Motor Vehicles § 110.

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

Injury or death caused by assault as within coverage of no-fault motor vehicle insurance, 44 A.L.R.4th 1010.

Validity, under insurance statutes, of coverage exclusion for injury to or death of insured's family or household members, 52 A.L.R.4th 18.

What constitutes "entering" or "alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage, 59 A.L.R.4th 149.

Key Numbers. — Automobiles ⇨ 144.1(4).

31A-22-303. Motor vehicle liability coverage.

(1) In addition to complying with the requirements of Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(a) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;

(b) (i) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(c) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

(ii) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(b)(i); and

(c) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured.

(2) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may:

(a) provide for the prorating of the insurance under that policy with other valid and collectible insurance;

(b) grant any lawful coverage in addition to the required motor vehicle liability coverage;

(c) if the policy is issued to a person other than a motor vehicle business, limit the coverage afforded to a motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and

(d) if issued to a motor vehicle business, restrict coverage afforded to anyone other than the motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent.

(3) Motor vehicle liability coverage need not insure any liability:

(a) under any workers' compensation law under Title 35;

(b) resulting from bodily injury to or death of an employee of the named insured, other than a domestic employee, while engaged in the employ-

ment of the insured, or while engaged in the operation, maintenance, or repair of a designated vehicle; or

(c) resulting from damage to property owned by, rented to, bailed to, or transported by the insured.

(4) An insurance carrier providing motor vehicle liability coverage has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

(5) A policy containing motor vehicle liability coverage imposes on the insurer the duty to defend, in good faith, any person insured under the policy against any claim or suit seeking damages which would be payable under the policy.

(6) (a) If a policy containing motor vehicle liability coverage provides an insurer with the defense of lack of cooperation on the part of the insured, that defense is not effective against a third person making a claim against the insurer, unless there was collusion between the third person and the insured.

(b) If the defense of lack of cooperation is not effective against the claimant, after payment, the insurer is subrogated to the injured person's claim against the insured to the extent of the payment and is entitled to reimbursement by the insured after the injured third person has been made whole with respect to the claim against the insured.

(7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

History: C. 1953, 31A-22-303, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 156; 1988, ch. 215, § 1.

Amendment Notes. — The 1988 amend-

ment, effective April 25, 1988, added Subsection (7), inserted "except as provided in Subsection (7)," in Subsections (b)(i) and (c); and made minor stylistic changes.

NOTES TO DECISIONS

ANALYSIS

Release.
Cited.

Release.

Injured party who entered into a settlement agreement with his tort-feasor, whereby he released the tort-feasor from any and all known and unknown personal injury as well as property damage arising from the auto accident,

cut off his insurance company's subrogation rights, and by so doing was not entitled to further benefits from his insurance company under the no-fault coverage. *Jones v. Transamerica Ins. Co.*, 592 P.2d 609 (Utah 1979) (decided under prior law).

Cited in *Barber v. Farmers Ins. Exch.*, 751 P.2d 248 (Utah Ct. App. 1988); *Wagner v. Farmers Ins. Exch.*, 786 P.2d 763 (Utah Ct. App. 1990).

COLLATERAL REFERENCES

A.L.R. — Liability insurance: when is vehicle in "dead storage," 48 A.L.R.4th 591.

Automobile liability insurance policy flight from police exclusion: validity and effect, 49 A.L.R.4th 325.

What constitutes use of vehicle "in the automobile business" within exclusionary clause of liability policy, 56 A.L.R.4th 300.

Validity and construction of automobile insurance provision or statute automatically terminating coverage when insured obtains another policy providing similar coverage, 61 A.L.R.4th 1130.

What constitutes "motor vehicle" for purposes of no-fault insurance, 73 A.L.R.4th 1053.

31A-22-304. Motor vehicle liability policy minimum limits.

Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below either of the following:

(1) twenty thousand dollars because of bodily injury to or death of one person, in any one accident, and, subject to this limit for one person, in the amount of \$40,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$10,000 because of injury to or destruction of property of others in any one accident; or

(2) forty thousand dollars in any one accident whether arising from bodily injury to or death of others, or from destruction of or damage to the property of others.

History: C. 1953, 31A-22-304, enacted by L. 1985, ch. 242, § 27.

NOTES TO DECISIONS

ANALYSIS

Liability of county.

Liability of self-insurers.

Cited.

Liability of county.

Liability of county, as self-insurer of own vehicles operated by permissive users, under former law. See *Foster v. Salt Lake County*, 712 P.2d 224 (Utah 1985).

Liability of self-insurers.

Public policy as expressed in Utah law is

that self-insurers must provide security for damages inflicted by themselves, and by permissive users of their vehicles. There is no expressed public policy that would require finding liability based upon mere ownership of a vehicle. *Lane v. Honeywell, Inc.*, 663 F. Supp. 370 (D. Utah 1987) (decided under former Title 31).

Cited in *Wagner v. Farmers Ins. Exch.*, 786 P.2d 763 (Utah Ct. App. 1990).

COLLATERAL REFERENCES

A.L.R. — Consortium claim of spouse, parent or child of accident victim as within extended "per accident" rather than "per person" coverage of automobile liability policy, 46 A.L.R.4th 735.

What constitutes single accident or occurrence within liability policy limiting insurer's liability to a specified amount per accident or occurrence, 64 A.L.R.4th 668.

sionary terms of automobile insurance policy, 46 A.L.R.4th 771.

Punitive damages as within coverage of uninsured or underinsured motorist insurance, 54 A.L.R.4th 1186.

Right of insured, precluded from recovering against owner or operator of uninsured motor

vehicle because of governmental immunity, to recover uninsured motorist benefits, 55 A.L.R.4th 806.

What constitutes "entering" or "alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage, 59 A.L.R.4th 149.

31A-22-305.5. Property damage protection.

(1) At the request of the named insured, every motor vehicle liability policy of insurance under Sections 31A-22-303 and 31A-22-304 or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 which policy does not provide insurance for collision damage shall provide coverage for property damage to the motor vehicle described in the policy for the benefit of covered persons, as defined under Section 31A-22-305, who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle, as defined under Subsections 31A-22-305(2)(a) and (c), arising out of the operation, maintenance, or use of an uninsured motor vehicle.

(2) The coverage provided under this section shall include payment for loss or damage to the motor vehicle described in the policy, not to exceed the motor vehicle's actual cash value or \$3,500, whichever is less. Property damage does not include compensation for loss of use of the motor vehicle.

(3) The coverage provided under this section shall be payable only if:

(a) the occurrence causing the property damage involves actual physical contact between the covered motor vehicle and an uninsured motor vehicle;

(b) the owner, operator, or license plate number of the uninsured motor vehicle is identified; and

(c) the insured or someone on his behalf reports the occurrence within ten days to the insurer or his agent.

(4) The coverage provided under this section shall be subject to a \$250 deductible and shall be excess to any other insurance covering property damage to the motor vehicle described in the policy.

(5) The insurer providing coverage under this section may make available additional deductibles at appropriate premium rates.

(6) No rating surcharge may be applied to any policy of motor vehicle insurance issued in this state as a result of payment of a claim made under this section.

History: C. 1953, 31A-22-305.5, enacted by L. 1990, ch. 321, § 1.

Effective Dates. — Laws 1990, ch. 321, § 2 makes the act effective on October 1, 1990.

31A-22-306. Personal injury protection.

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

the use or operation of the named insured's own motor vehicle not actually insured under the policy" for "and" in Subsection (1) and "under the circumstances described in Section (1), except where the person is injured as a result of the use or operation of his own motor vehicle

not insured under the policy; and" for "when injured in an accident in Utah involving any motor vehicle" in Subsection (2); and, in Subsection (3), deleted "in Utah" after the first instance of "occurring" and inserted "occurring in Utah" near the end of the subsection.

NOTES TO DECISIONS

ANALYSIS

Limitation of policy covering driver.
Motorcycle driven by insured.
Named-driver exclusionary endorsement.
Out-of-state incidents.

Limitation of policy covering driver.

Passenger in an automobile driven by insured's son but owned by another person was not entitled to personal injury protection (PIP) coverage under a policy covering the driver. *McCaffery v. Grow*, 787 P.2d 901 (Utah Ct. App. 1990).

Motorcycle driven by insured.

The coverages described in § 31A-22-307 were applicable to an insured killed while riding a motorcycle involved in an accident in this state with a motor vehicle; there is no requirement that the insured must be operating or occupying the motor vehicle to be subject to coverage, but only that he be in an accident involving a motor vehicle. *Coates v. American Economy Ins. Co.*, 627 P.2d 92 (Utah 1981).

Named-driver exclusionary endorsement.

Insurance policies used as security must include minimum omnibus coverage including persons operating the vehicle with the express or implied permission of the owner-insurer, and include the statutory minimum liability limits; a named-driver exclusionary endorsement to an insurance policy presented as security is void in relation to the statutory minimum level of coverage, but is enforceable as to coverage provided above the mandatory minimum limits. *Allstate Ins. Co. v. United States Fid. & Guar. Co.*, 619 P.2d 329 (Utah 1980) (decided before 1985 repeal of Chapter 12 of Title 41).

Out-of-state incidents.

In light of language limiting application of these provisions to accidents in this state, insurance commissioner's regulation making no-fault insurance coverage applicable to incidents occurring outside the state was in error. *IML Freight, Inc. v. Ottosen*, 538 P.2d 296 (Utah 1975).

COLLATERAL REFERENCES

A.L.R. — What constitutes "entering" or "alighting from" vehicle within meaning of in-

surance policy, or statute mandating insurance coverage, 59 A.L.R.4th 149.

31A-22-309. Limitations, exclusions, and conditions to personal injury protection.

(1) No person who has direct benefit coverage under a policy which includes personal injury protection may maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (a) death;
- (b) dismemberment;
- (c) permanent disability;
- (d) permanent disfigurement; or
- (e) medical expenses to a person in excess of \$3,000.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

- (i) for any injury sustained by the injured while occupying another motor vehicle owned by the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

(iii) to any injured person, if the person's conduct contributed to his injury:

(A) by intentionally causing injury to himself; or

(B) while committing a felony;

(iv) for any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;

(v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing; or

(vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear materials.

(b) The provisions of this subsection do not limit the exclusions which may be contained in other types of coverage.

(3) The benefits payable to any injured person under Section 31A-22-307 are reduced by:

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

(b) any amounts which that person receives or is entitled to receive from the United States or any of its agencies because he is on active duty in the military service.

(4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.

(5) Payment of the benefits provided for in Section 31A-22-307 shall be made on a monthly basis as expenses are incurred. Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after the proof is received by the insurer. If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of $1\frac{1}{2}\%$ per month after the due date. The person entitled to the benefits may bring an action in contract to recover the expenses plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

(6) Every policy providing personal injury protection coverage is subject to the following:

(a) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, including the Workers' Compensation Fund of Utah, the insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

(b) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

History: C. 1953, 31A-22-309, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 160; 1988 (2nd S.S.), ch. 10, § 10.

Amendment Notes. — The 1988 (2nd S.S.) amendment, effective September 5, 1988, added Subsections (2)(a)(iv) to (vi) and made

related stylistic changes, and substituted "is subject to the following" for "shall provide" in the introductory language of Subsection (6).

Meaning of "this code." — See note under same catchline following § 31A-22-102.

NOTES TO DECISIONS

ANALYSIS

Acceptance of monthly payment.
— Effect on insurer's obligation.
Attorney's fees.
— Appeal.
Claims against federal government.
Household exclusion clause.
Personal injury protection requirements.
Reimbursement.
— Recovery from insured and his insurer.
Release given by injured party to tort-feasor.
Tort claims.
— Liability of insured.
— Pleading and instructions.
Workers' compensation.

Acceptance of monthly payment.

— Effect on insurer's obligation.

The acceptance of a monthly payment by an insured from a no-fault insurer does not terminate the contractual obligation of the insurer to make additional payments for subsequently accrued claims. *Wilde v. Mid-Century Ins. Co.*, 635 P.2d 417 (Utah 1981).

Attorney's fees.

— Appeal.

Plaintiff was not required to file a cross-appeal in order to be entitled to attorney's fees incurred on appeal in defending his judgment for benefits. *Coates v. American Economy Ins. Co.*, 627 P.2d 92 (Utah 1981).

Claims against federal government.

Even if the federal government could be characterized as an insurer because it provided financial security for its employees in regard to vehicle operation claims, it could not be subjected to mandatory arbitration under Subsection (6), since this would conflict with the administrative arrangement established in the Federal Tort Claims Act. *U.S. Fid. & Guar. Co. v. United States*, 728 F. Supp. 651 (D. Utah 1989).

Household exclusion clause.

A household or family exclusion clause in an automobile insurance policy is contrary to public policy and to the statutory requirements found in the No-Fault Insurance Act as to the

minimum benefits provided by statute. *Farmers Ins. Exch. v. Call*, 712 P.2d 231 (Utah 1985).

If an insurer fails to disclose material exclusions in an automobile insurance policy and the purchaser is not informed of them in writing, those exclusions are invalid. Without disclosure, the household exclusion clause fails to honor the reasonable expectations of the purchaser, rendering the exclusion clause invalid as to the entire policy limits. *Farmers Ins. Exch. v. Call*, 712 P.2d 231 (Utah 1985).

Household or family exclusions are valid in this state as to insurance provided by an automobile policy in excess of the statutorily mandated amounts and benefits. *State Farm Mut. Auto. Ins. Co. v. Mastbaum*, 748 P.2d 1042 (Utah 1987).

Personal injury protection requirements.

In order to invoke the provisions of Subsection (6), the individual who initially pays the amounts for which personal injury protection benefits are also available must be "another insurer." *McCaffery v. Grow*, 787 P.2d 901 (Utah Ct. App. 1990).

Subsection (6) does not contemplate arbitration between an uninsured victim's father and another's insurance company. *McCaffery v. Grow*, 787 P.2d 901 (Utah Ct. App. 1990).

Reimbursement.

— Recovery from insured and his insurer.

Where passenger collected personal injury protection benefits from driver's insurer and received an additional settlement in an action against the driver of the other car, the insurer had no right of subrogation to the recovery of the passenger, but could claim reimbursement from the other driver's insurer in an arbitration proceeding. *Allstate Ins. Co. v. Ivie*, 606 P.2d 1197 (Utah 1980).

Release given by injured party to tort-feasor.

Injured party who entered into a settlement agreement with his tort-feasor, whereby he released the tort-feasor from any and all known and unknown personal injury as well as property damage arising from the auto accident,

PART III
OWNER'S OR OPERATOR'S SECURITY
REQUIREMENT

**41-12a-301. Requirement of owner's or operator's security
— Exceptions for off-highway vehicles and off-
highway implements of husbandry.**

(1) Every resident owner of a motor vehicle shall maintain owner's or operator's security in effect throughout the registration period of the motor vehicle.

(2) Every nonresident owner of a motor vehicle which has been physically present in this state for more than 90 days during the preceding 365 days shall thereafter maintain owner's or operator's security in effect continuously throughout the period the motor vehicle remains within Utah.

(3) The state of Utah and all of its political subdivisions and their respective departments, institutions, or agencies shall maintain owner's or operator's security in effect continuously in respect to their motor vehicles. Any other state is considered to be a nonresident owner of its motor vehicles and is subject to Subsection (2).

(4) The United States or any political subdivision of it, or any of its agencies, may maintain owner's or operator's security in effect in respect to their motor vehicles.

(5) Owner's or operator's security is not required for:

(a) off-highway vehicles registered under Section 41-22-3 when operated either:

(i) on a highway designated as open for off-highway vehicle use; or

(ii) in the manner prescribed by Section 41-22-10 3, or

(b) off-highway implements of husbandry operated in the manner prescribed by Subsections 41-22-5 5(3) through (5).

History. C. 1953, 41-12a-301, enacted by L. 1985, ch. 242, § 48; L. 1987, ch. 162, § 29.

Amendment Notes. — The 1987 amendment added Subsection (5).

NOTES TO DECISIONS

Liability of county.

Liability of county, as self-insurer of own vehicles operated by permissive users, under for-

mer law. See *Foster v. Salt Lake County*, 712 P 2d 224 (Utah 1985).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d Automobile and Highway Traffic § 156 et seq.

C.J.S. — 60 C.J.S. Motor Vehicles § 160; 60A C.J.S. Motor Vehicles § 248.

Key Numbers. — Automobiles ¶ 144, 147.

41-12a-306. Claims adjustment by persons with owner's or operator's security other than insurance.

(1) An owner or operator of a motor vehicle with respect to whom owner's or operator's security is maintained by a means other than an insurance policy under Subsection 41-12a-103(9)(a), shall refer all bodily injury claims against the owner's or operator's security to an independent adjuster licensed under Chapter 26, Title 31A, or to an attorney.

(2) Unless otherwise provided by contract, any motor vehicle claim adjustment expense incurred by a person maintaining owner's or operator's security by a means other than an insurance policy under Subsection 41-12a-103(9)(a), shall be paid by the person who maintains this type of owner's or operator's security.

(3) Owners and operators of motor vehicles maintaining owner or operator's security by a means other than an insurance policy under Subsection 41-12a-103(9)(a) are subject to the claim adjustment provisions of Part III, Chapter 26, Title 31A, in connection with claims against such persons which arise out of the ownership, maintenance, or use of a motor vehicle.

(4) In addition to other penalties and remedies available for failure to abide by this section, the department may require any person violating this section *to maintain owner's or operator's security only in the manner specified under Subsection 41-12a-103(9)(a).*

History: C. 1953, 41-12a-306, enacted by L. 1985, ch. 242, § 48; 1987, ch. 92, § 57. **Amendment Notes.** — The 1987 amendment, in Subsection (1), twice substituted "owner's" for "owner" and, in Subsection (2), corrected a statutory reference.

PART IV**PROOF OF OWNER'S OR OPERATOR'S SECURITY****41-12a-401. Means of providing proof of owner's or operator's security.**

(1) Whenever proof of owner's or operator's security is required under this chapter, it may be provided by filing with the department any of the following:

- (a) a certificate of insurance under Section 41-12a-402 or 41-12a-403;
- (b) a copy of a surety bond under Section 41-12a-405;
- (c) a certificate of deposit of money or securities issued by the state treasurer under Section 41-12a-406; or
- (d) a certificate of self-funded coverage under Section 41-12a-407.

(2) Whenever the term "proof of financial responsibility" is used in this title, it shall be read as "proof of owner's or operator's security."

History: C. 1953, 41-12a-401, enacted by L. 1985, ch. 242, § 48.

panied by evidence that there are no unsatisfied liens of any character on the assets deposited.

(2) The deposit shall be held by the state treasurer in trust to satisfy any execution on a judgment that would be paid under an insurance policy conforming to Section 31A-22-302 had the treasurer issued such a policy.

(3) Except as provided under Subsection (2), assets deposited with the treasurer under this chapter are exempt from attachment or execution.

History: C. 1953, 41-12a-406, enacted by
L. 1985, ch. 242, § 48.

41-12a-407. Certificate of self-funded coverage as proof of owner's or operator's security.

(1) The department may upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has and will continue to have the ability to pay judgments in an amount equal to twice the single limit amount under Subsection 31A-22-304(2). Persons holding a certificate of self-funded coverage under this subsection shall pay benefits to persons injured from the self-funded person's operation, maintenance, and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under Section 31A-22-302.

(2) Upon not less than five days' notice and a hearing pursuant to the notice, the department may, upon reasonable grounds, cancel the certificate. Failure to pay any judgment up to the limit under Subsection 31A-22-304(2) within 30 days after the judgment is final is a reasonable ground to cancel the certificate.

History: C. 1953, 41-12a-407, enacted by
L. 1985, ch. 242, § 48.

NOTES TO DECISIONS

ANALYSIS

Effect of self-insurance.
Liability of county
Self-insurer.

Effect of self-insurance.

Former provision that a self-insurer had to provide "security equivalent to that offered by a policy of insurance" did not engraft onto the statute all benefits which may be described as "standard" insurance policy provisions. *Foster v Salt Lake County*, 712 P 2d 224 (Utah 1985).

Liability of county.

Liability of county, as self-insurer of own vehicles operated by permissive users, under former law. See *Foster v Salt Lake County*, 712 P 2d 224 (Utah 1985).

Self-insurer.

Since a certificate of self-insurance is simply an assurance that judgments will be paid and is not really insurance or a policy of insurance, this section, by its own terms, does not require a self-insurer to provide uninsured motorist coverage to its passengers. *American States Ins. Co v Utah Transit Auth.*, 699 P 2d 1210 (Utah 1985) (decided under similar provisions of former § 41-12-21 1).