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Robert E. Simmons, Charrie Brennan, David A. Williams, Louie A. Short, Patricia L. Castillo, Beth L. Hurst, and Jay Ezra Rea v. State of Utah, Department of Public Safety, Financial Responsibility Division : Petition and Brief For Rehearing

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In The Supreme Court of the State of Utah

ROBERT E. SIMMONS, CHARRAN
NAN, DAVID A. WILLIAMS, GORDON
SHORT, PATRICIAL L. CANNON,
KETH L. HURST, and JAY

Plaintiffs
vs.

STATE OF UTAH, Department of
Safety, Financial Management

Defendant

Petition and Answer

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TABLE OF CONTENTS

	Page
PETITION FOR REHEARING	1
BRIEF IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING	2
PRIOR DISPOSITION	2
STATEMENT OF FACTS	3
RELIEF SOUGHT ON PETITION FOR REHEARING	4
ARGUMENT	5
POINT I. THE SUPREME COURT OF THE STATE OF UTAH ERRED IN ITS DECISION OF APRIL 1ST, 1970, IN THIS MATTER IN THAT THE COURT FAILED TO COMPREHEND THE FULL SCOPE OF THE STATUTORY INVESTIGATIVE DUTIES OF THE FINANCIAL RESPONSIBILITY DIVISION AND THE STATUTORY LIMITS ON THE AGENCY'S ACTING ON THE ACQUIRED INFORMATION.	5
POINT II. THE SUPREME COURT ERRED IN ORDERING THE AFFIRMATION OF THE ORDERS OF THE DEFENDANT INSTEAD OF REMANDING THEM FOR FURTHER CONSIDERATION BY THE DISTRICT COURT.	10
CONCLUSION	11

Cases Cited

Hague v. Department of Public Safety,Utah 2d....., 462 P.2d 418 (1969)	7
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Statutes Cited

Section 41-6-35 through 40, Utah Code Annotated 1953	2, 3, 6, 8
Section 41-6-35(b), Utah Code Annotated 1953	6, 8, 9
Section 41-6-40, Utah Code Annotated 1953	6
Section 41-12-1, et. seq., Utah Code Annotated 1953	2, 3
Section 41-12-1(a), Utah Code Annotated 1953	4
Section 41-12-2(b), Utah Code Annotated 1953	2, 3, 4, 5
Section 41-12-4, Utah Code Annotated 1953	8
Section 41-12-5(a), Utah Code Annotated 1953	3
Section 41-12-6, Utah Code Annotated 1953	7

In The Supreme Court of the State of Utah

ROBERT E. SIMMONS, CHARRIE BREN-
NAN, DAVID A. WILLIAMS, LOUIE A.
SHORT, PATRICIAL L. CASTILLO,
BETH L. HURST, and JAY EZRA REA,

Plaintiffs-Respondents,

vs.

STATE OF UTAH, Department of Public
Safety, Financial Responsibility Division,

Defendant-Appellant.

Case No.
11771

Petition and Brief for Rehearing

Plaintiffs in the above entitled matter hereby petition the Supreme Court of the State of Utah for a rehearing of the decision heretofore rendered in this case which was filed on the 1st day of April, 1970, on the grounds that: (1) the Court failed to comprehend the full scope of the statutory investigative duties of the Financial Responsibility Division and the statutory limits on the agency's acting on the acquired information; and (2) the Court's Order enforcing the Order of Suspension fails to consider the remaining cause of action in the respondents' Complaints which was not considered by the District Court, to wit: whether or not there

was a probability of liability on the part of each of these plaintiffs, and this matter if the Opinion of April 1st 1970 is not altered should now be remanded to the District Court for further consideration with the stays heretofore being granted being kept in full force and effect until said matters are heard by the District Court.

BRIEF IN SUPPORT OF RESPONDENTS' PETITION FOR REHEARING

STATEMENT OF NATURE OF CASE

This case concerns the legality of eight driver's license revocations by the appellant State of Utah under the Utah Financial Responsibility Laws, Sections 41-12-1, et. seq., Utah Code Annotated 1953, as amended.

PRIOR DISPOSITION

Each of the respondents, an uninsured motorist, was involved in an automobile accident. Acting upon the information available to it, the official reports required and authorized by Sections 41-6-35 through 40, Utah Code Annotated 1953, the Financial Responsibility Division of the Department of Public Safety issued an Order to each of the respondents requiring in the alternative either a security deposit or the suspension of their drivers' licenses. Pursuant to Section 41-12-2(b), Utah Code Annotated 1953, said Orders were appealed to the Third Judicial District Court, where, after review of the cases, judge

Bryant H. Croft ordered the permanent injunction of each of the Orders on the grounds that provisions of Section 41-12-5(a), Utah Code Annotated 1953, would not permit the appellant to issue such orders solely upon the basis of the official reports submitted to the Financial Responsibility Division. This decision was appealed to the Supreme Court of the State of Utah, which by Opinion filed April 1st, 1970, reversed the decision of Judge Croft and ordered the Orders enforced.

STATEMENT OF FACTS

The respondents in this action were all uninsured motorists who were involved in automobile accidents. Upon the receipts of the various reports required and authorized by the provisions of Sections 41-6-35 through 40 and Sections 41-12-1, et seq., Utah Code Annotated 1953, the Financial Responsibility Division of the Department of Public Safety determined that in each accident, there was personal injury or property damage in excess of \$100.00, and, after determining the precise amount required to be posted as security in each instance, ordered each of the respondents to post that amount of security or suffer the suspension of their drivers' licenses and motor vehicle registrations. There was no determination of either the probability of responsibility or whether any injured party desired the issuance of the Orders. The Orders were appealed pursuant to Section 41-12-2(b), Utah Code Annotated 1953, to the District Court, which enjoined those Orders on the ground that such an Order requiring either the

posting of security or suffering suspension of driver's license could not be issued if only the official reports had been submitted to the Commission.¹ Judge Croft ruled that the provisions of Section 41-12-5(a), Utah Code Annotated 1953, required that evidence in addition to these reports had to be submitted by an injured party or on his behalf before the Commission was authorized to issue such an Order. That decision was reversed by this Court in its decision of April 1st, 1970.

RELIEF SOUGHT ON PETITION FOR REHEARING

Respondents seek a reversal of the Opinion rendered by this Court on April 1st, 1970, and the affirming of Judge Croft's holding that the evidence submitted to the Commission was not sufficient under the laws of Utah to require the issuing of the Orders requiring the posting of security or suspension of driver's license of each of the respondents, or in the alternative, a modification of the Order of the Court requiring these matters remanded to the District Court for further proceedings on the allegations of the Complaints that there is no probability that the respondents will be responsible for the accidents. This issue was not considered by the District Court because it found no reason to consider these allegations after rendering the initial decision in this manner.

¹"Commission" is defined in Section 41-12-1(a), Utah Code Annotated 1953, as "The department of public safety" and as used in this brief shall refer to the Financial Responsibility Division of the Department of Public Safety.

ARGUMENT

POINT I.

THE SUPREME COURT OF THE STATE OF UTAH ERRED IN ITS DECISION OF APRIL 1ST, 1970, IN THIS MATTER IN THAT THE COURT FAILED TO COMPREHEND THE FULL SCOPE OF THE STATUTORY INVESTIGATIVE DUTIES OF THE FINANCIAL RESPONSIBILITY DIVISION AND THE STATUTORY LIMITS ON THE AGENCY'S ACTING ON THE ACQUIRED INFORMATION.

In the Opinion of April 1st, 1970, Justice Ellett, speaking for the Court, stated regarding the crucial language of Section 41-12-5(a), Utah Code Annotated 1953:

“The commission shall determine the amount of security deposited upon the basis of the reports or other evidence submitted to it but shall not require a deposit or security *for the benefit of any person* when evidence has not been submitted by such person or on his behalf as to the extent of his injuries or damage to his property within fifty (50) days following the day of accident. . . .” (Emphasis added)

“The underscored portion of the sentence indicates that someone other than the driver may also be able to satisfy any judgment recovered by him from the security posted but only if such other person files his proof within 50 days from the accident. These other people, such as passengers in the car, pedestrians, and

nondriving owners, are not *required* by the statute to file a report, but if they are to take advantage of the security, they must file proof of their damage within 50 days." (Emphasis added)

It would be respectfully submitted that this rationale and holding on the part of the Court is in error, because it fails to comprehend the full scope of the statutory investigative duties of the Commission and the statutory limits on the Commission taking action on the acquired information.

The key to understanding the dual nature of the Commission under the Motor Vehicle Code in the Financial Responsibility area is Section 41-6-40, Utah Code Annotated 1953. That statute states:

"All accident reports made by persons involved in accidents or by garages will be without prejudice to the individual so reporting and shall be for the confidential use of the department or other state agencies having use for the records for accident prevention purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. . . ." (Emphasis added)

It is clear from this provisions that the Commission has two statutory duties it must fulfill from the reports it is to gather as provided in Sections 41-6-35 through 40, Utah Code Annotated 1953. It is to evaluate them for accident prevention purposes and to use them as a basis to enforce the financial respon-

sibility laws. In so doing, it must require reports from all *witnesses* to an accident. Section 41-6-35(b), Utah Code Annotated 1953. The language of that statute is "may", but as will be pointed out *infra*, the information of all witnesses *must* be obtained if the Commission is to carry out its proper statutory function. This gathering of information has in turn two aspects. The first is a determination of what occurred. The second is what are the consequences of those events.

In determining what occurred, the Commission uses the reports to see what could have been done to prevent the accident—what caused it. Then, it reports its findings to the Legislature in the form of recommended changes in the Motor Vehicle Code. In the area of financial responsibility, the Commission determines if there is a probability of responsibility. If there is, and the driver is either without insurance or not covered by one of the exceptions of Section 41-12-6, Utah Code Annotated 1953, an Order requiring either the posting of security or suspension of the driver's license of the operator may be issued if the other conditions of the Financial Responsibility Laws are complied with by the Commission. *Hague v. Department of Public Safety*,Utah 2d....., 462 P.2d 418 (1969).

However, the Commission to determine fully what occurred must inquire fully into *all* the damages resulting from the accident. It must find out the extent of the injuries of everyone injured by the

accident.² If it does not do so, it will not be properly carrying out the legislative command to work on accident prevention because it will not know everything about the accident. Even more to the current point of inquiry, it will not be able to require the culpable uninsured individual to post sufficient security to "satisfy any judgment *or judgments* for damages resulting from such accident." (Emphasis added) Section 41-12-5(a), Utah Code Annotated 1953. The Commission must determine the extent and value of *all damages to every party* injured in an accident in order to carry out its mandate. It is to use the reports required and authorized by Sections 41-6-35 through 40, Utah Code Annotated 1953, to make this determination. Sections 41-12-4 and 5(a), Utah Code Annotated 1953. To carry out this function, the Commission is authorized to require a report from *all witnesses*. Section 41-6-35(b), Utah Code Annotated 1953. This term "witness" means anyone who can provide information about an accident. This includes damages as well as events and this provision has been so construed by the Commission which has sent personal injury reports to treating physicians (e.g. Williams). It also sends damage reports to damaged third parties, e.g., Utah Power and Light Co., if one of their poles is struck during the course of an accident, even though there is no specific authority to do so elsewhere in the Motor

²An example of this type of inquiry are the current laws regarding seat belts, flasher lights, etc., all of which come from inquiries into accidents. The laws regarding seat belts come from investigating injuries while those regarding flashers come from inquiries into the causes of accidents.

Vehicle Code. In sum, anyone who is injured must be asked about his injury if the amount of security to be required is to be set at a level sufficiently high to "satisfy any judgment *or judgments*." Thus, *any and all* injured parties must be sent report forms by the the Commission if it is to accurately set the level of security to be required. This is the meaning not only of Section 41-6-35(b), Utah Code Annotated 1953, it is also the meaning of Section 41-12-5(a), Utah Code Annotated 1953, as clear from the language "judgment *or judgments*."

Accordingly, the error in the Court's prior Opinion is clear. The Court felt that injured nonparties (i.e., passengers, pedestrians, and nondriving owners) were not required to file reports and the language "for the benefit of any person" referred to them. It does not. These persons *must* be required to submit reports if the Commission carries out its statutory duties.³

The Commission, having completed its required investigations, may issue an Order only if the injured party or parties desire the issuance of such an Order and file proof of their damages in accordance with the statute to invoke it. The language of Section 41-12-5(a), Utah Code Annotated 1953:

"The commission shall determine the amount of security deposited upon the basis of the re-

³It should be noted by the Court that the construction of the statute articulated by the Court was never put forward by the appellant at any stage of these proceedings. This is because the Commission interpreted the statute as has been outlined above and they have acted accordingly.

ports or other evidence submitted to it but shall not require a deposit of security *for the benefit of any person* when evidence has not been submitted by such person or on his behalf as to the extent of his injuries or damage to his property within fifty (50) days following the day of accident. . . ." (Emphasis added)

requires this Court to hold that before the Commission is empowered to issue an Order requiring either the posting of security or the suspension of a driver's license, the party entitled to and for whose benefit such an order is to be issued must act affirmatively by submitting evidence of his damage.⁴

POINT II.

THE SUPREME COURT ERRED IN ORDERING THE AFFIRMATION OF THE ORDERS OF THE DEFENDANT INSTEAD OF REMANDING THEM FOR FURTHER CONSIDERATION BY THE DISTRICT COURT.

In the Complaints filed in the District Court in each of these matters, it was alleged that each of the respondents would not be found responsible for damages as a result of the accident in which they were involved. Each of these cases was decided before the publication of the Opinion of this Court in *Hague v. Department of Public Safety*,Utah 2d....., 462 P.2d 418 (1969), and when Judge Croft decided these cases, he held no evidence for the injured drivers having been submitted to the Commission,

⁴The detailed arguments in support of this having been presented to this Court in the Respondents' Brief, will not be set forth in full here.

the Orders were invalid, and, therefore, he had no reason to consider the issue of responsibility. Accordingly, each of these cases should be remanded for further hearings on the issue of the responsibility of each of the respondents for damages if the Court does not reverse itself as has been heretofore urged, for further determination as to whether or not orders should be enforced or stayed.

CONCLUSION

In the Opinion filed April 1st, 1970, the Court erred in failing to properly comprehend the full scope of the investigatory functions of the Department of Public Safety and the statutory limits on the Commission's ability to act on the acquired information. Accordingly, when the statutes are properly viewed and construed, the Court should reverse its decision of April 1st, 1970, and affirm the decision of Judge Croft. However, if the Court determines not to so reconsider this matter, it should then, rather than enforcing the Order as was done in the Opinion of April 1st, 1970, remand each of these cases for further consideration of the issue of responsibility in the District Court.

Respectfully submitted,
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