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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 Responsibil-lty Division : Reply Brief of Appellant

In The Supreme Court of the State of Utah

ROBERT E. SIMMONS, CHARRIE BRENNAN, DAVID A. WILLIAMS, LOUIE A. SHORT, PATRICIA L. CASTILLO, BETH L. HURST, and JAY EZRA REA,
Plaintiffs-Respondents,

vs.

STATE OF UTAH, Department of Public Safety, Financial Responsibility Division,
Defendant-Appellant.

Reply Brief of Ap[illegible]

VERN[illegible]
Atto[illegible]

LAU[illegible]
Chief [illegible]
G[illegible]

DA[illegible]
A[illegible]
Gen[illegible]

236 Sta[illegible]
Salt La[illegible]

Attorneys [illegible]

DAVID S. DOLOWITZ
Salt Lake County Bar Legal Servic[illegible]

431 South Third East
Salt Lake City, Utah

Attorney for Respondent

FIL[illegible]

JAN 9 [illegible]

Clerk, Supreme C[illegible]

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STATE OF UTAH, Department of Public Safety, Financial Responsibility Division,
Defendant-Appellant.

Case No. 11771

Reply Brief of Appellant

SCOPE OF REPLY BRIEF

The purpose of this brief is to respond to the brief by the plaintiffs-respondents. The facts as set out by the Brief of Appellant are hereby incorporated and made a part of this brief.

ARGUMENT

POINT I

REPORTS FILED BY THE PARTIES TO THE ACCIDENT AND THE INVESTIGATING OFFICER ARE SUFFICIENT EVIDENCE UPON WHICH THE COM-

MISSION MAY BASE ITS DECISION TO SUSPEND THE LICENSES OF UNINSURED MOTORISTS.

In the hearings below, an accident report filed by the investigating officer was relied on by the Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah. The Director also relied on accident reports filed by the parties involved in the accident. These reports are present in every file.

Both of these reports are required by Utah Code Ann. § 41-6-35 (Supp. 1969). The Utah Code also provides for the contents to be included in these reports. One of the purposes of these reports is stated as follows:

> "Every such report shall also contain information sufficient to enable the department to determine whether the requirements for the deposit of security under any of the laws of this state are inapplicable by reason of the existence of insurance or other exceptions specified therein." Utah Code Ann. § 41-6-37(c) (1960).

It is clear, then, that these Section 41-6-35 reports are to be used by the Director in making security deposit determinations.

The specific issue involved in this case deals with the language quoted below:

> "The commission shall determine the amount of security deposit upon the basis of

> the reports 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 the damage to his property* within fifty (50) days following the date of the accident. . . ." (Emphasis added.) Utah Code Ann. § 41-12-5(a) (1960).

As has previously been pointed out, the commission has a duty to make some determinations on the basis of the Section 41-6-35 reports submitted to it. The commission cannot require a security deposit when neither the injured motorist nor the investigating officer submits evidence as to the extent of the injuries or property damage.

In each of the cases at the bar, the injured motorist had completed a report spelling out the extent of his injuries or property damage.

One should also note that the statutory language in Section 41-12-5(a) allows for submission of reports "on his (secured party's) behalf." This would include the officer's reports and estimates made by body shops and personal injury reports filled in by physicians, which reports are never sought directly by the department, but only solicited by the parties to the accident desiring accurate reports to be before the commission.

Since this report can be made "on his behalf," there need not be an additional "affirmative act . . . made by an injured party to show that he desires

to invoke the benefits of the act." Brief of Respondents at 9.

The Brief of Respondent interprets the trial court to hold that if one is injured by an uninsured motorist and the injured person files the required 41-6-35 reports, he would also have to file additional reports, even though the original 41-6-35 reports covered the full extent of the injuries. It would be more logical to allow the reports to serve dual functions. If further injuries such as medical costs or more accurate property damages through estimates are unavailable within the five days required for reporting, but are subsequently received, they could be filed as supplementary evidence of damages within the fifty day period required in Section 41-12-5(a), as amended in 1960.

The only mandate of the statute is the filing of the Section 41-6-35 reports. If one fails to file these reports, then he is subject to the following statute:

> **". . . Any person convicted of failing to make a report as required herein shall be punished as provided in Section 41-6-164 (misdemeanor)." Utah Code Ann. § 41-6-37(d) (Supp. 1969).**

Not only can he be punished for a misdemeanor, but he loses his rights (after 50 days) of obtaining a supplemented security deposit from an uninsured motorist through Utah Code Ann. § 41-12-5(a) (1960).

This is the logical way of reading the clause:

> ". . . but it 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 the damage to his property within fifty (50) days following the date of the accident." Utah Code Ann. § 41-12-5(a) (1960).

It should also be kept in mind that the Safety Responsibility Act is for the public protection, not just the protection of the injured motorist. This may be one reason why the statute allows one (such as the investigating officer) to file reports "on his behalf."

In a recent (and as yet unreported) Utah Supreme Court case, the Court dealt with the same language that is involved in this case. That case dealt with the problem which bothered Judge Croft and the respondents—the injustice when there is clear liability on the part of the injured motorist. The Court stated:

> "We believe the department should consider all of the facts presented to it by way of accident reports, the reports of investigating officers and other evidence submitted to it and where the evidence would indicate that there is a lack of culpability on the part of the driver or drivers, the department should not under those conditions suspend the operator's license or the automobile registrations of the person or persons involved." *Hague v. State of Utah*, No. 11494, Filed December 5, 1969, at page 2.

The *Hague* case requires the commission to use

a standard, and the standard as suggested in *Hague* must be available through the reports before it.

CONCLUSION

Appellant respectfully requires that for the reasons above stated, the lower court's decision should be reversed.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

LAUREN N. BEASLEY
Chief Assistant Attorney General

DAVID S. YOUNG
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah

Attorneys for Appellant