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Iowa Supreme Court Holds Insurance Coverage is Unavailable if Unidentified Hit and Run Driver Does Not Physically Contact Victim

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ACCUTANE WARNINGS (from page 105)

At the time Felix ingested Accutane, these warnings were accurate. Documented cases of Accutane-related teratogenicity in human fetuses and offspring appeared only *after* Felix had ingested Accutane. The language used in the warnings thus contained no misrepresentations that would mislead a physician prescribing the drug. For these reasons, the Supreme Court held the warnings were comprehensive, clear, and accurate. Thus, the court affirmed the judgement of the appellate court.

Warnings Not Proximate Cause of Infant's Death

The supreme court similarly adopted the reasoning of the appellate court that, although Greenwald's alleged failure to share his knowledge of the dangers of Accutane with Felix might be important in a claim against the doctor himself, such was irrelevant in a liability action against the manufacturer Hoffmann-LaRoche. Both courts observed that the manufacturer could not be held liable for a doctor's failure to impart knowledge to a patient.

The supreme court concluded that the death of Felix's child could not be attributed to an inadequacy in the warnings because the warnings were adequate at the time Greenwald prescribed the drug to Felix. Moreover, Hoffmann-LaRoche had only the duty to warn the prescribing physician of the drug's dangers unless the FDA stipulated otherwise. Because Hoffmann-LaRoche had fulfilled its duty, it could not be held liable.

Elizabeth A. Mitchell

1. Accutane, derived from Vitamin A, falls within a class of drugs known as retinoids. Since 1954, retinoids have been known to cause birth defects in children whose mothers ingested them in large doses during pregnancy. Patients taking Accutane suffer side effects which include loss of vision, severe depression, gastrointestinal and cardiac problems, and central nervous system disorders. See Nygaard, *Accutane: Is the Drug a Prescription for Birth Defects?*, 24 TRIAL 81 (1988).
2. Teratogenicity is defined as the ability to create a deformed, abnormal being. Accutane's teratogenicity was first noted by Dr. Wener Bollag of Hoffmann-LaRoche's parent company. Bollag compared Accutane's effects to those of thalidomide, the highly-publicized tranquilizer that was withdrawn from the market in the 1960s because it caused severe limb deformities in the children of mothers who had used the drug. *Id.*

IOWA SUPREME COURT HOLDS INSURANCE COVERAGE IS UNAVAILABLE IF UNIDENTIFIED HIT AND RUN DRIVER DOES NOT PHYSICALLY CONTACT VICTIM

In *Moritz v. Farm Bureau Mut. Ins. Co.*, 434 N.W.2d 624 (Iowa 1989), the Iowa Supreme Court ruled that the "uninsured motorist" clause of an automobile insurance policy does not apply when there is no physical contact between the insured car and a vehicle which is claimed to have caused the accident. Reasoning that insurance companies must be protected from fraudulent claims, the court held that the companies need not provide coverage when there is no physical contact between the insured car and the unidentified vehicle. In addition, the court held that the doctrine of reasonable expectations, which requires that insurance policies be construed as the insured layperson would construe them, was properly considered and rejected by the lower court. Finally, the court rejected the plaintiff's claims that Iowa's uninsured motorist statute, Iowa Code Ann. 516A.1-516A.4 (West 1988) ("the Act"), violates the equal protection clauses of the Iowa and the United States Constitutions.

Background

In September, 1986, Michaela Moritz (Moritz) was a passenger in a car that was forced off the road by an unidentified driver of another vehicle. The car ran into a tree and Moritz was injured. Moritz brought suit against the Farm Bureau Mutual Insurance Company ("Mutual Insurance"), the insurer of the car in which she was riding, to recover for her injuries under the policy's "uninsured motorist" clause. Two counts of her complaint alleged that Mutual Insurance was liable for Moritz' injuries caused by the unidentified driver of the other vehicle. In its motion for summary judgment, Mutual Insurance maintained that collisions caused by unidentified motorists were covered only when there was physical contact between the un-

known car and the insured vehicle. The trial court determined that a prerequisite to coverage under the policy is that there be contact between the vehicles in question. Because there was no contact between the vehicles in this case, the court granted the motion for summary judgement in favor of Mutual Insurance.

Iowa statutorily provides uninsured motorist coverage to victims of hit-and-run accidents for injuries "arising out of *physical contact*...with a motor vehicle which the [insured] is occupying at the time of the accident." Iowa Code Ann. § 516A.1 (West 1988) (emphasis added). On appeal to the Iowa Supreme Court, Moritz contended that the doctrine of reasonable expectations should be applied to extend coverage to victims of accidents when there is no contact between the vehicles. Moritz, however, did not produce any evidence to support her argument that the doctrine of reasonable expectations should apply, other than a general claim that a policy purchaser might have expected coverage under similar circumstances. In addition, Moritz asserted that the Act violates the equal protection clauses of the Iowa and United States Constitutions.

No Coverage Under Case Law or Express Language of Policy

The Iowa Supreme Court affirmed the order of the trial court. The court first addressed Moritz' assertion that her injuries should be covered under the doctrine of reasonable expectations, as adopted by the Iowa Supreme Court in *Rodman v. State Farm Mut. Auto. Ins. Co.*, 208 N.W.2d 903 (Iowa 1973). The doctrine of reasonable expectations protects the insured layperson by providing that policies will be interpreted from the perspective of the average insurance policyholder rather than that of the insurance underwriter. The doctrine usually comes into play if a policy's exclusion is bizarre or oppressive, if a policy eviscerates terms explicitly agreed to, or if a policy eliminates the dominant purpose of the transaction.

The court next noted that in *Rohret v. State Farm Mut. Auto. Ins. Co.*, 276 N.W.2d 418 (Iowa 1979), it had interpreted the Act to authorize insurance companies to include a policy clause which requires physical contact with the unidentified vehicle. Furthermore, the terms of the policy issued by Mutual Insurance required that the unidentified car actually strike the insured vehicle in order for it to qualify for coverage. The policy defined "uninsured motor vehicle" as "a 'hit-and-run' land motor vehicle whose owner or driver remains unknown and which strikes...the vehicle the insured is occupying and causes bodily injury to the insured." 434 N.W. 2d at 625. In light of the *Rohret* decision and the terms of the policy, the Iowa Supreme Court declined to extend uninsured motorist coverage to situations that involve no physical contact between the vehicles.

No Equal Protection Violation

Next, the court examined Moritz' claim that the Act violated her right to equal protection under the federal and state constitutions. She argued that the physical contact requirement of the Act unfairly deprived a class of policyholders of their right to insurance coverage. In order to sustain her claim, however, Moritz had the burden of negating every reasonable basis for upholding the denial of insurance coverage to her class of policyholders. The court stated that the Act's physical contact requirement was intended to ensure that an accident had in fact occurred, and accepted this reasoning as a valid basis for excluding coverage to victims of accidents when there is no physical contact between the vehicles. The court also observed that the California Supreme Court had rejected an equal protection challenge to its uninsured motorist statute for similar reasons.

In sum, the supreme court affirmed the dismissal of the claims relating to the unidentified driver of the other vehicle, as well as the summary judgment in favor of Mutual Insurance. The court declined to rule on two other counts in Moritz' complaint because the lower court's ruling had not addressed them.

Carole Crawford