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# The North Dakota Unsatisfied Judgment Fund

A. R. Bergesen

# THE NORTH DAKOTA UNSATISFIED JUDGMENT FUND*

A.R. BERGESEN**

IN 1947, North Dakota, following the example of the Province of Manitoba, passed an Unsatisfied Judgment Fund Law.[1] Under its provisions the sum of One Dollar was collected with each motor vehicle license paid during the year 1948. A total fund of $238,054.00 was thus collected and deposited with the State Treasurer in a special fund known as the "Unsatisfied Judgment Fund".

The Act provides that "if on the 31st day of December in any year the amount of such fund exceeds $175,000.00, the requirement for the payment of such fee shall be suspended during the succeeding year and until such year in which, on the 1st day of January, the amount of such fund is less than $100,000.00, when such fee shall be reimposed and collected as provided herein".

Since 1948, there has been no additional assessment. At the time of this writing, however, the fund is almost exhausted and an additional sum of One Dollar is being collected on all motor vehicle licenses issued for the year 1953.

The act, as originally adopted, provided further:

> "Where any person, who is a resident of this state, recovers in any court in this state a judgment for an amount exceeding $300.00 in any action for damages resulting from bodily injury to, or the death of, any person occasioned by, or arising out of, the ownership, maintenance, operation or use of a motor vehicle by the judgment debtor in this state, upon such judgment becoming final, such judgment creditor may, in accordance with the provisions of this Act apply to the Judge of the District Court in which such judgment was rendered, upon notice to the Attorney General, for an Order directing of the judgment out of said fund. Upon the hearing of the application, the judgment as set out in this section, stating the amount thereof and the amount owing thereon at the time of the application; (2) that he has caused an execution to be issued thereon, and that (a) the Sheriff has made a return thereon showing that no property of the judgment debtor liable to be seized in satisfaction of the judment debt, could be found, or (b) the amount realized on the sale of property seized, or otherwise realized under the execution, was insufficient to satisfy the judgment, stating the amount

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**Of Burnett, Bergeson, Haakenstad & Conmy, Fargo, N. D.

1. Chapter 274, Session Laws, 1947; Chapter 39-17, Vol. 8 Revised Code of 1943, 1949 Supplement.

so realized and the balance remaining due thereon; (3) that he has caused the judgment debtor, where the judgment debtor is available, to be examined pursuant to law for that purpose, touching his property and in particular as to whether the judgment debtor is insured under a policy of automobile insurance against loss occasioned by his legal liability for bodily injury to, or the death of, another person; (4) that he has made an exhaustive search and inquiry to ascertain whether the judgment debtor is possessed of property, real or personal, liable to be sold or applied in satisfaction of the judgment; and (5) that as a result of such search, inquiry and examination he has learned of no property, real or personal, possessed by the judgment debtor and liable to be sold or applied in satisfaction of the judgment debt, or that he has learned of certain property, describing it, owned by the judgment debtor and liable to be seized or applied in satisfaction of the judgment, and has taken all necessary proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the amount remaining due thereon."

The original Act made no provision for the case of the undiscovered "hit and run" driver nor did it make any exception in the case of default judgments. In 1951, the legislature amended the Act so as to permit an injured person to bring action against an unidentified hit and run driver by service upon the state highway commissioner, provided such action is brought within six months of the accident and provided further that "notice of such accident was given to some police officer immediately after the accident occurred and the name of such officer shall be alleged in the complaint".[2] The Act was further amended so as to prohibit payment from the fund "in the case of any judgment entered by default, unless the state highway commissioner and the attorney general have been given at least thirty days notice prior to the entry of such judgment".[3]

The Attorney General may appear and be heard on any application for payment from the fund and show cause, if any there be, why the order applied for should not be made. He may also enter appearances in hit and run and default cases for the protection of the Fund.

Payments are made from the Fund upon order of the Judge of the District Court before whom the case was heard. An appeal may be taken from such order to the Supreme Court by either the plaintiff or the Attorney General.

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2. Chapter 258, Session Laws, 1951.
3. Chapter 259, Session Laws, 1951.

Recovery may be had for death and personal injuries, only. The maximum amounts are $5000.00 for injury or death of one person and $10,000.00 for more than one in any one accident. Any amount realized from the judgment debtor shall be deducted from the award and the state is, to the extent of such award, subrogated to the rights of the judgment creditor.

In such case, also, the judgment debtor is deprived of the right to a driver's license and motor vehicle registration until such sum is repaid with interest at two per cent, and he further offers proof of financial responsibility under the Financial Responsibility Act. Provided, however, that up ten days notice to the Attorney General, the Court in which the judgment was secured may make an order allowing the judgment debtor to repay such amount in installments, whereupon, his license and motor vehicle registration may be restored and "shall remain in effect until and unless such person defaults in making any installment payment specified in the order".

Payments out of the Fund have been as follows:

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| 1948, 1 claim | $ 1,224.50 |
| 1949, 8 claims | 23,017.52 |
| 1950, 9 claims | 15,671.04 |
| 1951, 38 claims | 119,717.80 |
| 1952 to Nov. 20, 23 claims | 65,934.62 |

The balance in the Fund as of November 20, 1952, was $18,597.12. This includes interest earned and repayments by three judgment debtors paying under the installment provision. The total of such collections amounts to only $335.00.

I have made a cursory study of the files in a substantial number of the cases in the office of the Attorney General. One is impressed by such study with the fact that adequate safeguards for the protection of the Fund have not been provided.

The Fund was not intended as cheap insurance at the rate of One Dollar per assessment for the indigent or irresponsible motor vehicle driver or owner. The Fund should have adequate protection both by the provisions of the Act and by the enforcement of those provisions. It is or should be a fund of last resort, to which access is available only after all other reasonable means of enforcing collection have been exhausted. At the same time, the Fund was created for the beneficial purpose of relief against hardship which often occurs in this modern motor age when almost any irresponsible person is permitted to guide the wheel

of a mechanism which can kill and destroy. It should be administered with sufficient liberality to perform its true function.

The administration has been faulty in North Dakota primarily because the Legislature made no appropriation for the expense of administration. The responsibility for its administration is placed mainly in the office of the Attorney General without provision for additional legal assistance. It simply added more work to an already busy department.

It can easily require the full time of one lawyer to adequately handle the work in North Dakota. As it is, one Assistant Attorney General is assigned to this work as he may find time from his other duties. The members of the staff are the first to acknowledge that our present system is inadequate and an examination of the files confirms it. Care has been exercised to see that the requirements of the law, so far as the paper record is concerned, have been fulfilled, but careful investigation of facts and appearances in Court for the protection of the Fund, under the circumstances, have been impossible.

Since this Act was adopted in 1947, there has not been a single case carried to the Supreme Court of North Dakota for the interpretation of the law. By contrast, in the Province of Ontario, which also adopted a similar law in 1947, by the year 1951, forty-five cases had been submitted to and decided by the Court of Appeal for that Province.[4] These decisions have given the public and the bar a yardstick in the interpretation and administration of the law. The Ontario lawmakers did not overlook the necessity for adequate appropriations to administer the Fund.

Under the Ontario decisions, to which attention is called in the address by Mr. Silk, some of the points of interest are as follows:

(1) A judgment creditor must commence and pursue to completion in good faith actions against all persons against whom he might reasonably be considered as having a cause of action. An unsatisfied judgment against the driver is not sufficient if the owner has not been sued.[5]

(2) A judgment creditor who takes default judgment without reasonable notice to the Minister of Highways cannot recover.[6]

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4: Address by Eric H. Silk, K. C., Senior Solicitor and Counsel to the Attorney General for Ontario, made before the Canadian Bar Association, and issued by the Motor Vehicle Branch, Department of Highways, Toronto, Ontario, Canada.

5. Betts v Ford (1950) O.W.N. 706.

6. McDonald v McGinnis (1949) O.W.N. 127.

(3) A consent judgment can be collected from the Fund only if certain requirements as to information to the Minister's legal advisers have been met.

(4) It was not the purpose of the Act to provide free defense but to do justice and at the same time protect the Fund.

(5) "It was not the intention of the Legislature to make access to the Fund. easy, and each application for an order directing payment out of the Fund should be closely examined to ensure that the intention of the Legislature is given full effect".[7]

(6) "Such provisions were never intended either as a sort of free insurance or as a more convenient method of recovery under their respective judgments. By the very wording of s.98 the judgment creditor is required to exhaust every reasonable effort against the parties responsible".[8]

(7) "The Court must be satisfied before making an order that the requirements as to exhaustive searches and inquiries have been observed. Consequently, the nature of the exhaustive searches and inquiries must be set out in detail so that the judge can come to his decision as to whether the requirement of the Act have been met and, if so, whether the order should be granted".[9]

(8) If the applicant has pursued the debtor as resolutely and resourcefully as he would have done in like circumstances before the Act was passed, then he has taken all reasonable steps to recover upon the judgment.[10]

The Canadian statutes, particularly Ontario, are more comprehensive and better designed to protect the Fund than is our North Dakota statute. Amendments are in order. For instance, our law is not clear that proceedings to final judgment must be had against all possible defendants. Nor is there any requirement as to showing that applicant knows of no other claim being made for damages resulting from the same accident. Then there are judgments by confession. Any such judgment naturally raises the question of the possibility of collusion, especially where there is a Fund available for payment. Of course, if collusion could be proved, the claim, undoubtedly, would be denied. This should not be necessary. The Attorney General should have adequate notice, not only in default cases, but also whenever there is not to be a good faith defense as to the amount of damage as well as to liability.

Adequate appropriations for competent full time personnel are

7. Sinclair v Woodward (1951) O.W.N. 816.
8. Kates and Kates v Morrison (1951) O.W.N. 701.
9. Leguille v Davies (1950) O.W.N. 306.
10. Rossiter v v Chiasson (1950) O.W.N. 265.

the secret of successful administration. The Canadian provinces. with full time legal staff and the assistance of the Royal Mounted Police and other facilities for investigation, have been more successful in their administration than have we in North Dakota.

A most interesting situation seems to exist in the Province of British Columbia. A letter from the office of the Attorney General for that Province addressed to the Attorney General of North Dakota states:

> "Sections 114 to 117 of the 'Motor Vehicle Act' have never been enforced. By an agreement made with certain insurance companies, it was agreed that, without payment of any of the fees required under section 114, the insurance companies would voluntarily assume the liability imposed by the unsatisfied judgment fund sections of the 'Motor Vehicle Act'."

This is novel. The experience in British Columbia should prove valuable. It is my belief that investigations under the unsatisfied judgment fund law should approach the thoroughness achieved by insurance companies. However, the method employed in British Columbia is subject to the objection that it is unfair to place upon those who insure the burden of paying for the claims against the uninsured.

To some degree that objection also obtains against the North Dakota and the Canadian statutes. A large part of those who pay the one dollar assessment also provide insurance. That seems unfair. It is the most common complaint from the general public. That complaint has merit.

Nevertheless, unless some satisfactory system is devised whereby all people have some reasonable form of recourse against the negligent owner or operator of a motor vehicle, compulsory insurance of some kind will be the result. Two things are significant about the Massachusetts experience. One is that, in spite of the fact that it has been in operation for many years, no other state has followed suit. That indicates some demerits. The other is that Massachusetts has never repealed its compulsory insurance statute. That indicates merit.

Has anyone ever thought of requiring the uninsured to provide the money for the unsatisfied judgment fund? I thought not until I learned of the provisions of the unsatisfied judgment fund law adopted in 1952 by the New Jersey Legislature. The New Jersey Fund is to be provided by payment of a $3.00 fee on registration of an uninsured motor vehicle and a $1.00 fee on registration of an insured motor vehicle. That is a step in the right direction. I would go one step further and require whatever

fee may be adequate to sustain the fund to be paid annually by the uninsured and no fee upon proof of compliance with the Financial or Security Responsibility Law. I would further authorize the Legislature to appropriate from the fund itself such monies as may be necessary for the administration and enforcement of the Act. Then the responsibility would be where it should be. The uninsured would provide the money for the payment of claims due to their own negligence and their own inability to pay.

I express to the members of the staffs of the Attorney General and the Legislative Research Committee of North Dakota my appreciation for their helpful cooperation and assistance.

## TABLE OF CASES CITED IN ADDRESS BY MR. SILK

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# A WORD OF ACKNOWLEDGMENT

The accompanying article on "The Scandinavian Law of Torts" by Professor Henry Ussing is reprinted, by permission of the board of editors, from the Autumn, 1952, issue of the American Journal of Comparative Law. This new Quarterly has been established by a number of leading American law schools and the American Foreign Law Association to provide the legal profession in the United States with comparative information concerning questions of private international law, and significant development in the domestic laws of foreign countries. It is the only journal in this country specifically devoted to these problems, which are from day to day assuming increased importance in consequence of the growing extension and complexity of the foreign interests of the United States.

Articles in the American Journal of Comparative Law, as exemplified by Professor Ussing's distinguished contribution, are devoted to the following objects: First, to survey trends in the laws of other countries that are of special interest. Second, to promote the comparative understanding of legal ideas and institutions, which is of special scientific and practical importance not only in dealing with questions involving foreign law but also in the necessary evaluation of domestic law. Third, to draw attention to the legal aspects of problems arising in connection with the foreign commerce of the United States. And fourth, to survey from a comparative viewpoint the important developments in the related fields of legal theory, legal history, and other disciplines.

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1. Suggestions and inquiries respecting the American Journal of Comparative Law (subscription $5.00 per annum) are invited and may be addressed to the editor-in-chief, Professor Hessel E. Yntema, University of Michigan Law School, Ann Arbor, Michigan.