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Lynn Crooks

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# NORTH DAKOTA UNSATISFIED JUDGMENT FUND

LYNN CROOKS\*

## INTRODUCTION

In 1947 the legislative assembly of the State of North Dakota enacted legislation which created the North Dakota Unsatisfied Judgment Fund.<sup>1</sup> Although no historical notes or legislative minutes are available which set forth the reasons for establishing the Unsatisfied Judgment Fund, the motivation seems quite obvious. In 1947 the insurance endorsement known as "uninsured motorist coverage" had not yet made its debut. No motorist had available the means of adequately protecting himself against the uninsured driver. He could, of course, take out collision insurance which would in most cases cover his own car damage. He could also purchase a variety of different types of health and medical insurance policies which would cover at least part of his medical bills. He could not, however, purchase insurance which would satisfactorily pay him for the pain and suffering, loss of income and future disability associated with bodily injury. Nor could he adequately protect himself against the pecuniary loss resulting from the wrongful death of a member of his family. Humanitarian reasons, therefore, prompted the establishment of a "mercy fund" or "fund of last resort" to protect the resident of this state against the financial hardships caused by irresponsible, uninsured, judgment proof drivers.<sup>2</sup>

The North Dakota Unsatisfied Judgment Fund Act was patterned after a similar plan adopted in Ontario.<sup>3</sup> No other states adopted analogous legislation until 1955 when New Jersey enacted what is called an Unsatisfied Claim and Judgment Fund law.<sup>4</sup> New Jersey was followed by Maryland in 1959.<sup>5</sup> More recently

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\* Ph.B., J.D. 1956, University of North Dakota School of Law; Special Assistant Attorney General, Attorney for the Unsatisfied Judgment Fund.

1. N.D. Sess. Laws 1947 Ch. 274.

2. *Venson v. Schneider*, 68 N.W.2d 665 (N.D. 1955).

3. *Rall v. Schmidt*, 104 N.W.2d 305 (N.D. 1960).

4. N.J. REV. STAT. § 39: 6-64 (Supp. 1955) *et seq.*

5. MD. CODE ANN. tit. 66 1/2 § 150 *et seq.* (1967).

Michigan adopted an act which is similar to North Dakota's and Ontario's.<sup>6</sup> Other states have also adopted plans to handle the problem of the uninsured driver, but these bear little similarity to North Dakota's law.

There are two major differences which distinguish the North Dakota act from those listed above. In all other jurisdictions a driver must either file proof of financial responsibility or pay an additional registration fee before he can be licensed to drive. It is a crime to drive without having done either. This fee varies from twenty-five dollars in New Jersey<sup>7</sup> to thirty-five dollars in Michigan.<sup>8</sup> Secondly, all of the jurisdictions listed above pay for property damage as well as bodily injury and death whereas in North Dakota the recovery is limited to bodily injury and death.

#### ADMINISTRATION<sup>9</sup>

Although the statute does not designate an administrator for the Fund, the Attorney General has assumed supervision of same since he is the one charged with the duty of protecting it. The State Treasurer also acts in an ex-officio capacity as custodian of the moneys in the Fund. The actual management and operation of the Fund is done by an attorney appointed by the Attorney General. This attorney is deemed to be the administrator.<sup>10</sup>

The Unsatisfied Judgment Fund is financed by a one dollar assessment on all motor vehicle license plates sold in North Dakota.<sup>11</sup> By statute this fee is suspended when the Fund balance is \$100,000 or more on June 1st of any particular year.<sup>12</sup> In the twenty-one years the Fund has been in operation, the fee has been collected nine times.

Since 1948 when the Fund first became operational, a total of \$2,831,406.36 has been expended.<sup>13</sup> Approximately \$280,000.00 of this amount was for administration and the balance was for payment of judgments.<sup>14</sup> To give an idea of how the volume of cases has increased in recent years: In a ten year period from

6. MICH. PUBLIC ACTS 1965, Act. 198, as amended.

7. N.J. REV. STAT. § 39: 6-63 (Supp. 1965). This statute sets a maximum of twenty-five dollars but the commissioner can set it at a lower level.

8. MICH. PUBLIC ACTS 1965, Act 198, as amended, § 3 (2). Maryland originally had an eight dollar assessment but now has no limits; MD. CODE ANN. tit. 66 1/2 § 151 (1967).

9. The statistics given herein are taken from the records and files of the Unsatisfied Judgment Fund unless otherwise noted.

10. Att'y. Gen's. opinion, Feb. 5, 1965 to Walter Christensen, St. Treas.

11. N.D. CENT. CODE § 39-17-01 (Supp. 1967).

12. N.D. CENT. CODE § 39-17-02 (Supp. 1967). In Att'y. Gen's. opinion, Oct. 6, 1967 to Lynn E. Crooks, Admin. Unsatisfied Judgment Fund, Attorney General Helgi Johanson ruled that the \$100,000 figure applied only to uncommitted revenue in the Fund.

13. As of June 30, 1967.

14. This is an estimate based on 10% for administration; there are no records available to give an exact figure. N.D. CENT. CODE § 39-17-02 (Supp. 1967) gives a standing appropriate of all money needed for administration but not exceeding \$35,000 per year, but it appears that this figure has never been reached.

July 1, 1955 to June 30, 1965 an average of forty-five judgments were paid each year; from July 1, 1965 to June 30, 1966, however, seventy-four judgments were paid, and in the next fiscal period sixty-seven were paid.<sup>15</sup>

In 1963 the legislature raised the limits of the Fund from \$5,000 per person and \$10,000 per accident to \$10,000 per person and \$20,000 per accident.<sup>16</sup> As was expected, this raised substantially the amount paid out of the Fund in each fiscal year. In the four years preceding July 1, 1963 the average yearly amount paid on judgments was \$140,000. In the four years succeeding July 1, 1963 the average yearly amount paid out was \$247,000. The latter figure, however, does not fully illustrate the impact of the 1963 change because many of the cases paid after July 1, 1963 actually arose before that date and were therefore subject to the old limits.<sup>17</sup>

#### PROCEDURES

Unlike the Workmen's Compensation Bureau, the Unsatisfied Judgment Fund has no procedures available by which it can adjust claims independently. The money paid into the state treasury as set forth above can be paid out only pursuant to court order.<sup>18</sup> The Fund is never a party to the cases it is involved in unless the action is one against an unidentified "hit and run" driver.<sup>19</sup> The action must be sued out against the defendant driver and service made upon him in the same manner as in any other lawsuit.<sup>20</sup> Since the state is not a party, service on the Attorney General will not suffice.<sup>21</sup>

If the defendant does not make an appearance and put in an answer on his own behalf, notice must then be given to the Attorney General and the State Highway Commissioner informing them of the suit.<sup>22</sup> (see Appendix A.) Upon receipt of such notice together with a copy of the summons and complaint the Attorney General may enter an appearance, file a defense or take such other action as he may deem appropriate on behalf and in the name of the defendant. The Attorney General has thirty days in which to respond to the plaintiff's notice. A default judgment or a confession of judgment entered prior to such notice would not be binding on the Unsatisfied Judgment Fund.<sup>24</sup>

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15. The annual caseload is approximately 25% higher than the number of judgments paid.

16. N.D. Sess. Laws 1963 Ch. 282 § 2.

17. *Monson v. Nelson*, 145 N.W.2d 892 (N.D. 1966).

18. N.D. CENT. CODE § 39-17-05 (1960).

19. *King v. Menz*, 75 N.W.2d 516 (N.D. 1956); *Bonniwell v. Flanders*, 62 N.W.2d 25 (N.D. 1954).

20. *King v. Menz*, *supra* note 19.

21. *Id.*

22. N.D. CENT. CODE § 39-17-04.

23. *Id.*

24. *Bonniwell v. Flanders*, *supra* note 19.

If, on the other hand, the defendant retains his own attorney and proceeds to conduct his own defense, presumably there would be no need of notifying the Attorney General until such time as the plaintiff petitions the court for an order for payment from the Fund.<sup>25</sup> In such a case, the Fund would be bound by the judgment unless it could show collusion between the parties or that the defense had not been conducted in a competent manner. The Attorney General could, of course, still resist the plaintiff's petition for payment on the ground that the petitioner was not a proper recipient.<sup>26</sup>

Once the suit has been started and the Attorney General has answered, the case proceeds in much the same manner as where the defendant is defended by his insurance company. Both sides will conduct such investigation and discovery as they deem appropriate and if no "settlement" is agreed upon, the case will be set on the calendar and tried. Upon trial, if the defense is successful the action will, of course, be dismissed and that will end the matter, providing there are no appeals. Should the plaintiff prevail, he must then follow the procedures set forth below, again providing the Fund does not choose to appeal the judgment.

As a practical matter, the majority of Fund cases like the majority of insurance cases do not end in contested litigation. Even though there is nothing in Chapter 39-17 which expressly authorizes settlements, there is likewise nothing in Chapter 39-17 which says that the Attorney General must defend every suit. Thus, the practice which has been adopted, with the approval of the District Judges (especially those with crowded calendars) is to agree upon the damages and stipulate that the matter may be tried to the court uncontested in much the same manner as where one would prove up a default. (see Appendix B.) The procedure required, depending to some extent upon which judge is hearing the case, consists primarily of establishing a case of liability and demonstrating that the damage figure set is reasonable.

In either event, whether the case is tried or "settled", the plaintiff must enter a judgment before he can proceed against the Fund.<sup>27</sup> Upon entry of judgment, the plaintiff must have the clerk of court issue an execution to the sheriff and await its return. (One source of revenue often overlooked is the deposits made with the Safety Responsibility Division.)<sup>28</sup> The next step after return of

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25. N.D. CENT. CODE § 39-17-04 (1960), speaks only of defaults. It does not require notice to be given if the defendant is not in default. In many cases of this type, defense counsel will request authority to "settle".

26. N.D. CENT. CODE § 39-17-04 (1960).

27. N.D. CENT. CODE § 39-17-03 (1960).

28. N.D. CENT. CODE §§ 39-16-05 and 39-16-10 (Supp. 1967).

the execution, and after ascertaining that there are no assets or insurance available, is to petition the court for an order directing payment of the unsatisfied portion of the judgment out of the Fund. Notice of hearing on this motion must be given to the Attorney General unless it has been waived.<sup>29</sup>

The petition for payment should specify among other things the following:<sup>30</sup> (see Appendix C.)

1. That the petitioner was a resident of the State of North Dakota at the time of the accident involved;<sup>31</sup>
2. That the accident happened in the State of North Dakota and arose out of the ownership, maintenance, operation or use of a motor vehicle by the judgment debtor;
3. That he has recovered a judgment in a court in North Dakota for bodily injury or death, exceeding three hundred dollars; and that such judgment is final;
4. What amounts, if any, have been paid to the petitioner under an uninsured motorist insurance policy or by the Workmen's Compensation Bureau;<sup>32</sup>
5. That he has caused an execution to be issued; the amount realized from levy of same, and the balance outstanding after applying the recovery, if any, against the judgment;
6. That he has made an exhaustive search for any assets the judgment debtor might possess which might be applied to the judgment, setting forth either that he found no assets or that after having taken all necessary steps to apply such assets to the judgment, the judgment still remained partially unsatisfied;
7. The petition should include a statement either that there was no insurance found or that the insurance policy was insufficient;
8. That he has caused the judgment debtor, where available, to be examined, pursuant to law, regarding his assets, particularly any automobile insurance policies which might cover the loss;
9. The net balance outstanding on the judgment and the

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29. N.D. CENT. CODE § 39-17-03 (1960).

30. All references are to N.D. CENT. CODE § 39-17-03 (1960), unless otherwise noted.

31. Geller v. Sather, 147 N.W.2d 661 (N.D. 1966); Benson v. Schneider, 68 N.W.2d 665 (N.D. 1955).

32. N.D. CENT. CODE § 39-17-07. (Supp. 1967).

amount prayed for in the petition, subject to the Fund limits.

As a matter of practice, some of the steps set forth above may be waived by the Attorney General. An example would be the personal examination of the defendant if it would be inconvenient to make such examination and it is conceded by everyone that his appearance would uncover no assets or insurance.<sup>33</sup>

When the plaintiff's motion is heard, the Fund may appear and resist same if it appears that the petitioner is not a qualified recipient. The Fund may also appeal from an adverse order granting payment.<sup>34</sup> In most cases, however, the application for payment is uncontested. Upon the court granting the plaintiff's motion and issuing its order directing the State Treasurer to pay the judgment, the plaintiff must assign his judgment to the State Treasurer for the use and benefit of the Fund before payment can be made.<sup>35</sup> (see Appendices D and E.)

#### UNIDENTIFIED DRIVERS<sup>36</sup>

In cases involving the unidentified driver the procedures are more brief than those set forth above. The action is brought directly against the Unsatisfied Judgment Fund, as there is no defendant to sue. It must be brought in the county where the accident occurred and must be started within six months of the accident. Also, it is necessary that the accident be reported to some police officer immediately afterwards and that such police officer's name appear in the complaint. Service should be made directly on the Attorney General and the State Highway Commissioner. The case then proceeds as any other civil action. The Fund may interpose an answer and raise any defenses that the unidentified driver might have had if he had been named as a defendant. If the plaintiff satisfies the court that there was in fact an unidentified driver involved in the accident and that such driver would have been liable for the injuries sustained by the plaintiff, the court will determine the damages and enter judgment accordingly. The damages, of course, will be limited to \$5,000 per person and \$10,000 per accident pursuant to section 39-17-03.1 of the NORTH DAKOTA CENTURY CODE.

The plaintiff's petition for payment should specify that the judgment had been entered, the balance outstanding thereon and that the plaintiff was a resident of the state at the time of the accident.

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33. If an examination is had it is generally taken at the same time the motion is heard.

34. N.D. CENT. CODE § 39-17-06 (1960).

35. N.D. CENT. CODE § 39-17-08 (1960).

36. All references are to N.D. CENT. CODE § 39-17-03.1 (1960).

All other pertinent facts would have been brought out prior to judgment. Nor is it necessary to assign the judgment to the State Treasurer as the Fund is subrogated by statute to any rights the plaintiff might have against the unidentified driver should his identity become known. Upon the court's granting the plaintiff's motion, an order must be issued directing the State Treasurer to pay the judgment.

#### FUND LIMITS<sup>37</sup>

In 1963 the legislature raised the Fund limits from \$5,000 per person and \$10,000 per accident to \$10,000 per person and \$20,000 per accident. They did not, however, raise the limits on those cases involving an unidentified motorist. As is pointed out above, the plaintiff must first attempt to collect his judgment from the defendant himself. He may then apply to the Fund for the remainder. He is limited, however, to a \$10,000 total recovery insofar as the Fund is concerned. If he has already collected \$10,000 or more from the defendant, he cannot collect anything from the Fund. By way of further illustration; if the plaintiff has recovered a \$25,000 judgment against the defendant and has realized \$5,000 from a levy on the defendant's real estate, he could only collect \$5,000 more from the Fund even though there would be \$20,000 outstanding when the application was made. By the same token, if he has recovered a judgment in the amount of \$8,000 and has collected \$5,000 by levy, he could only collect \$3,000 from the Fund. In applying the Fund limits, all of the damages suffered as the result of an injury to any one person must be viewed as a unit.<sup>38</sup> For example, if a child recovers a \$10,000 judgment for his injuries and the entire amount is payable from the Fund, the father could not also collect his \$2,000 judgment for medical expenses and loss of services which were connected with the child's injuries. A pro-ration would then have to be made.<sup>39</sup>

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37. N.D. CENT. CODE § 39-17-07 (Supp. 1967) reads as follows: "No order shall be made by the court directing the payment of more than ten thousand dollars, exclusive of costs, in the case of a judgment resulting from bodily injury to, or the death of, one person in one accident, nor, subject to such limit of ten thousand dollars for each person so injured or killed in one accident, shall an order be made directing the payment of judgments for more than twenty thousand dollars, exclusive of costs, in cases arising out of one accident. In cases where the judgment creditor has effected the collection of a part his judgment from any source, the amount authorized to be paid from such fund shall be the difference between ten thousand dollars or the amount of the judgment, whichever is smaller, and the amount realized thereon. Provided that in computing the amount authorized to be paid from the fund, any amount the judgment creditor has received from an uninsured motorist insurance policy or the workmen's compensation bureau shall be subtracted from the amount of the judgment before applying the above formula.

The right of any person to recover from the unsatisfied judgment fund shall not be assignable and subrogation of such right shall not be allowed." (All references are to this section unless otherwise noted.)

38. *Rall v. Schmidt*, 104 N.W.2d 305 (N.D. 1960).

39. N.D. CENT. CODE § 39-17-09 (Supp. 1967).



In the case of *Pearson v. State Unsatisfied Judgment Fund*,<sup>40</sup> the North Dakota Supreme Court held that the Fund could not deduct from its limits the amounts paid to the plaintiff under an uninsured motorist insurance endorsement. In that case, the insurance company had waived its subrogation rights against the defendant. The holding in effect allowed a double recovery to the plaintiffs. In the later case of *Tschider v. Burtt*s,<sup>41</sup> the court was presented with the same basic fact situation that was found in *Pearson* except for the fact that in *Tschider* the insurance company had not waived its subrogation rights and was attempting to recover from the Fund the money it had expended. The court ruled that the insurance company had acquired no rights under the Unsatisfied Judgment Fund law and said that it could not recover on its subrogated interest. Shortly after the *Tschider* case was decided, the Attorney General ruled that the Workmen's Compensation Bureau was in the same position as the insurance companies.<sup>42</sup>

In 1967 the legislature redrafted Section 39-17-07 of the NORTH DAKOTA CENTURY CODE.<sup>43</sup> The effect of this amendment was to overturn the *Pearson* decision and codify the *Tschider* holding. The net result is to allow the Fund to subtract the amounts paid to the plaintiff under either an uninsured motorist insurance policy or the Workmen's Compensation Bureau from the judgment before determining the amount to be paid out of the Fund. This prevents a double recovery but still allows the plaintiff to take advantage of both the Fund and the other two sources in cases where the judgement is above the amount the plaintiff has received from either of those sources. This can best be explained by a hypothetical illustration: A was involved in an accident with B. B had no insurance but had real estate subject to levy valued at \$1,000. A had settled with his own insurance company under the uninsured motorist endorsement for \$7,000. He also received Workmen's Compensation benefits in the amount of \$3,000 as of the date of judgment. Upon trial, A recovered a judgment in the amount of \$21,000. To determine what is payable from the Fund, you must first subtract the insurance payment and the Workmen's Compensation award from the amount of the judgment. This leaves \$11,000, or \$1,000 more than the Fund limit. Since A is only entitled to \$10,000 as between the defendant and the Fund you must subtract \$1,000, the amount B has paid, from \$10,000. This leaves \$9,000 which the Fund must pay. As can be seen, this leaves A with a total recovery

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40. 114 N.W.2d 257 (N.D. 1962).

41. 149 N.W.2d 701 (N.D. 1967).

42. Att'y. Gen's. opinion, April 20, 1967 to Walter Christensen, St. Treas.

43. N.D. Sess. Laws 1967 Ch. 815.

of \$20,000 or \$1,000 short of his total judgment. The insurance company and the Workmen's Compensation Bureau, of course, can recover nothing back from the Fund. In cases where the judgment is below \$10,000 after subtracting the insurance payment and the compensation benefits, the procedure is the same except that the amount the defendant has paid is subtracted from the balance of the judgment rather than \$10,000 to determine what the Fund will pay.

#### THE DEFENDANT<sup>44</sup>

Much to the surprise of many defendants, the Unsatisfied Judgment Fund is not an insurance scheme which supplies them with free insurance. If the defendant prevails at trial and no appeal is taken, his worries are at an end. If, however, a judgment is entered against him, his troubles have just begun. Besides being open to execution by the state once the judgment has been assigned to the State Treasurer, the defendant's drivers license is also subject to revocation until the entire amount expended by the Fund has been repaid.

The money can be repaid either by a lump sum payment or by installment payments ordered by the court. The installment agreements vary with each individual depending on the circumstances of his case. The most usual type is monthly installments. If, at any time, the defendant defaults in his installment payments, his license may again be revoked and he must make a penalty payment in the amount of two hundred dollars to get it back. In addition to his installments, the defendant must supply proof of financial responsibility to the Safety Responsibility Division of the State Highway Department.

#### CONCLUSION

Over the years the North Dakota Unsatisfied Judgment Fund has on different occasions come under fire from various sources. The bulk of this criticism stems from a lack of knowledge as to how the Fund operates and what its purposes are. Despite the shortcomings that the Fund might have, it appears to have served North Dakota quite well and it appears to have fulfilled the purpose for which it was created. In the opinion of this writer, every state has an obligation to take some steps toward solving the problem of the uninsured motorist. This becomes more evident as the number of motorists and hence the number of automobile accidents increases each year. North Dakota was the first state to recognize this obligation.

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44. All references are to N.D. CENT. CODE § 39-17-10 (Supp. 1967).

Since the North Dakota law was passed, many states have adopted plans designed to solve the problem. The states listed in the introduction to this article have adopted legislation that is analogous to North Dakota's. Three states have enacted compulsory insurance plans.<sup>45</sup> Several states have adopted laws requiring that all automobile insurance policies sold contain an uninsured motorist endorsement.<sup>46</sup> Many of these, however, allow a right of refusal.<sup>47</sup> One Canadian province has enacted a program of "compensation without fault."<sup>48</sup> The controversial Keeton-O'Connell plan has in recent years sparked many discussions in legal circles regarding this entire area of the law.<sup>49</sup>

It is not the intent of this article to dwell in any length on the merits or demerits of any particular approach to the problem. It is the opinion of this writer, nevertheless, that the plan North Dakota now has is the cheapest and most effective type available to meet the needs of the state. This is not to say that North Dakota's Fund would necessarily work well in a more populated area or that it could not undergo some revision. A study could well be made as to the feasibility of including property damage claims in its coverage. This study should include an examination of the impact that would be felt if out of state accidents were included. Along with the latter suggestion should be an exploration of possible reciprocity legislation between states having similar laws. There are also changes which might be made to expedite settlement and payment of claims. The increased cost of administration experienced by any changes made might well be taken care of by an additional levy on all uninsured drivers. In any event, if changes are necessary they should be made with the idea in mind of improving our present Unsatisfied Judgment Fund rather than discarding it in favor of a different plan.

#### FORMS

(These forms are included for illustrative purposes only and do not represent any set form which must be followed)

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45. MASS. ANN. LAWS. Ch. 90 § 34 A et. seq. (Supp. 1966); N.Y. VEHICLES AND TRAFFIC § 310 et. seq. (McKinney 1960); N.C. GEN. STAT. § 20-309 et. seq. (Supp. 1967).

46. E.g. CAL. INSURANCE CODE § 11580.2 (Supp. 1967); N.H. REV. STAT. § 268: 15-a (Supp. 1967); N.MEX. STAT. § 64-24-105 (Supp. 1967); VA. CODE ANN. § 38.1-38.1 (b) (Supp. 1966).

47. E.g., see California and New Mexico citations, *supra* note 46.

48. SASK. REV. STAT. Ch. 409 (1965).

49. Green, *Basic Protection and Court Congestion*, 52 A.B.A.J. 926 (1966); Marryott, *The Tort System and Automobile Claims: Evaluation of Keeton-O'Connell Proposal*, 52 A.B.A.J. 689 (1966); Keeton-O'Connell, *Basic Protection: A Rebuttal to Its Critics*, 53 A.B.A.J. 633 (1967).

## APPENDIX A

NOTICE TO ATTORNEY GENERAL AND STATE HIGHWAY COMMISSIONER  
(omitting formal parts)

TO HON. HELGI JOHANNESON, ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA AND HON. WALTER HJELLE, HIGHWAY COMMISSIONER OF THE STATE OF NORTH DAKOTA:

PLEASE TAKE NOTICE, THAT the above entitled action has been commenced by the above named Plaintiff against the above named Defendant for personal injuries arising from the negligent operation of a motor vehicle by the Defendant in the State of North Dakota; THAT the action was commenced by the service of a copy of the Summons and Complaint upon the Defendant (stating the manner and place of service) on the 1st day of February, 1966; THAT the Defendant has failed within the twenty days (20) allowed by statute to submit an answer or other proper response and is at the present time in default; THAT if no answer or other proper response is received within thirty days (30) from the date of service of this notice as is provided in Section 39-17-04 North Dakota Century Code judgement will be taken by default for the relief prayed for in the Complaint.

A copy of said Summons and Complaint is attached hereto, and made a part hereof and is herewith served upon you.

Dated and signed

## APPENDIX B

## STIPULATION (omitting formal parts)

IT IS HEREBY STIPULATED AND AGREED between John Doe, Attorney for the Plaintiff, and Lynn E. Crooks, Special Assistant Attorney General for the Unsatisfied Judgment Fund that the above captioned case may be tried to the Court without a jury and without further notice to the office of Attorney General; and that should the Court award liability in favor of the Plaintiff and against the Defendant, the Court may award to the Plaintiff an amount not to exceed One Thousand Dollars (\$1,000) as damages for bodily injury resulting from a motor vehicle accident occasioned by the negligence of an uninsured motorist. The above amount shall include all costs and disbursements.

Dated and signed

## APPENDIX C

PETITION FOR ORDER DIRECTING PAYMENT OF JUDGMENT OUT OF  
UNSATISFIED JUDGMENT FUND (omitting formal parts)

Comes now the Plaintiff in the above captioned action and petitions the Court for an order directing payment of his judgment out of the State Unsatisfied Judgment Fund. In support of such petition the Plaintiff alleges and shows the Court the following:

1. THAT he was a resident of the State of North Dakota on August 1, 1967, the date of the motor vehicle accident involved herein;
2. THAT the accident referred to herein arose from the negligent operation of a motor vehicle by the Defendant on U.S. highway 83 near Minot in the State of North Dakota;

3. THAT on November 1, 1967 notice of the action was served upon the Attorney General and the State Highway Commissioner pursuant to Section 39-17-04 North Dakota Century Code, and in response thereto the Attorney General filed an answer in the Defendant's behalf.
4. THAT pursuant to a jury verdict duly rendered in Ward County, a judgment for the Plaintiff and against the Defendant in the amount of Nineteen Thousand Dollars (\$19,000) was entered by the Ward County Clerk of Court on March 1, 1968; that the Attorney General has waived the right to appeal from such judgment;
5. THAT the Plaintiff has settled with his own insurer under an uninsured motorist endorsement for the amount of \$7,000; and that the Plaintiff has received \$3,000 in benefits from the Workmen's Compensation Bureau.
6. THAT he has caused an execution to be issued and that upon levy of some \$1,000 in personal property was found, sold, and the proceeds applied to the judgment, leaving a balance of \$18,000 unsatisfied.
7. THAT he has made an exhaustive search for any other assets which the judgment debtor might possess which could be applied against the judgment and has found none.
8. THAT he has found no insurance policy which would cover any part of the judgment debtor's liability on the judgment.
9. THAT he has caused the judgment debtor to be examined pursuant to law and that such examination revealed nor further assets, including insurance policies, which could be applied against the judgment.
10. THAT after subtracting the amounts specified in paragraphs 5 and 6 herein from the judgment, the balance remaining wholly unsatisfied is \$8,000.

WHEREFORE, the Plaintiff respectfully petitions the Court for an order directing the State Treasurer to pay the aforementioned Eight Thousand Dollars (\$8,000) out of the Unsatisfied Judgment Fund pursuant to Chapter 39-17 of the North Dakota Century Code.

Dated and signed

#### APPENDIX D

##### ORDER FOR PAYMENT (omitting formal parts)

The Plaintiff's petition having come on for hearing on April 1, 1968, the Plaintiff appearing in person and by his Attorney, John Doe, and the Unsatisfied Judgment Fund appearing through Lynn E. Crooks, Special Assistant Attorney General; it appearing that the matters set forth in the Plaintiff's petition are true; that the Plaintiff is a proper applicant under the provision of Chapter 39-17 North Dakota Century Code and that a total of Eight Thousand Dollars (\$8,000) is outstanding as set forth in the petition;

IT IS ORDERED, that the State Treasurer pay to the Plaintiff the amount of Eight Thousand Dollars (\$8,000) out of the Unsatisfied Judgment Fund.

Dated and signed

## APPENDIX E

## ASSIGNMENT OF JUDGMENT (omitting formal parts)

Comes now Snyder Whiplash, Plaintiff in the above entitled action, and pursuant to Section 39-17-08 of the North Dakota Century Code does hereby sell, assign and set over all my right, title and interest in a judgment entered in the above captioned action against Jack Frost, Defendant, on the 1st day of March, 1968 in Ward County, North Dakota in the amount of Nineteen Thousand Dollars (\$19,000), to the State Treasurer of the State of North Dakota for the use and benefit of the Unsatisfied Judgment Fund.

Dated, signed and notarized