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Ronald F. Sceglio

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COMMENTS

INTERVENTION BY AN AUTOMOBILE INSURANCE COMPANY IN A SUIT BY ITS INSURED AGAINST AN UNINSURED MOTORIST

RONALD F. SCEGLIONE

Public concern for the innocent victim of an automobile accident who must bear the burden of his injuries caused by a financially irresponsible tortfeasor, has brought about a number of attempts to provide him with some means of compensation. These include establishment of financial responsibility laws, compulsory insurance laws, and uninsured motorist laws.¹ Uninsured motorist insurance was introduced in the middle 1950s to compensate for inadequacies of the financial responsibility and compulsory insurance laws. The purpose of this coverage was to protect the insured when he was legally entitled to recover but precluded from doing so by circumstances which prevented recovery from the tortfeasor. With the great expansion of the automobile industry since the end of World War II, the number of uninsured motorists has increased to the point that it is estimated that twenty percent of the eighty million private passenger automobiles in the United States are not covered by liability insurance.² Statistically, one out of every five accidents will involve an automobile which is uninsured. Because a large volume of litigation is generated in this area there is a need for the establishment of procedural guidelines.

TEXAS' UNINSURED MOTORIST STATUTE

Most of the states have made uninsured motorist coverage a matter of state legislation.³ Many of the states have made uninsured motorist coverage mandatory, *i.e.* the insured is required to obtain it and the companies are required to provide it. In two states, Maryland and North Dakota, and in the District of Columbia, uninsured motorist insurance is neither required to be purchased nor provided. The majority of the states require insurance companies to provide uninsured motorist coverage if desired by the insured, but allow him to reject the coverage. Texas follows the majority.

¹ For a review of the factors leading up to the development of uninsured motorist insurance see WIDIS, A GUIDE TO UNINSURED MOTORIST COVERAGE, 3-17 (1st ed. 1969).

² N.Y. Times News Service report of a Department of Transportation study, June 22, 1970, as reprinted in *Automobile Ins. News*, INS. DIC., Taylor publications, June 27, 1970.

³ A compilation of summaries of state laws relating to uninsured motorist coverage can be found in CCH AUTO. L. REP. in the section on Financial Responsibility.

Uninsured motorist insurance was approved by the Insurance Commission in Texas in 1957, and afterwards was written into the standard automobile policy in Texas.⁴ Voluntary coverage has been available in Texas since 1957, but it was not until 1967 that Texas enacted legislation concerning this coverage.⁵

Texas' uninsured motorist statute is divided into three sections. Section (1) provides that all automobile liability insurance policies issued in Texas are to include uninsured motorist coverage, but gives the insured the power to reject the coverage. Section (2) authorizes the State Board of Insurance to define "uninsured motor vehicle" and "promulgate the forms of the uninsured motorist coverage." Section (3) provides the insurance company with subrogation rights to the proceeds of a settlement or judgment in favor of its insured, when it makes a payment to him.⁶

The statute has no procedural guidelines for making claims under the policy, nor for bringing suit to recover from the uninsured motorist, or from the insurer. Also, there are no provisions which expressly or impliedly permit or deny the insurer the right to intervene on behalf of a defendant uninsured motorist in a suit brought against him by the company's insured. Therefore, the rights of the parties in uninsured motorist litigation are primarily determined in accordance with the provisions and judicial construction of the insurance policy supplemented by law in related areas.

INTERVENTION IN GENERAL

One issue directly related to litigation involving uninsured motorist coverage is the right of the insurance company to intervene on behalf of the uninsured motorist when he is sued by the injured insured party. In general, anyone having an interest in the subject matter of litigation between other parties may intervene for the purpose of asserting and protecting that interest.⁷ Such an interested person does not have to rely on the litigants to protect him; through intervention he can protect his own rights.⁸

If the party has no interest which could be affected by the proceedings, he cannot intervene.⁹ Intervention will not be allowed if it will delay the trial, complicate the issues or work injury to the original parties in

⁴ Address by Pat Maloney, Uninsured Motorist Coverage, Belli Seminar, Dec. 7, 1968.

⁵ TEX. INS. CODE ANN. art. 5.06-1 (Supp. 1970).

⁶ *Id.* The latter part of § (3) relates to the situation when the defendant motorist is insured by a company which becomes insolvent.

⁷ *Smalley v. Taylor*, 33 Tex. 668 (1870); *Graves v. Hall*, 27 Tex. 148 (1863); *Eccles v. Hill*, 13 Tex. 65 (1854).

⁸ *Pool v. Sanford*, 52 Tex. 621 (1880).

⁹ *Meyberg & Wangelin v. Steagall & Co.*, 51 Tex. 351 (1879); *Leach v. Millard*, 9 Tex. 551 (1853).

the preparation and presentation of their cases. This is particularly true where none of the rights of the intervenor are jeopardized by denying the intervention.¹⁰ Intervention will not be permitted where the intervenor, if he were the sole defendant, is not entitled to prevent a recovery.¹¹ The Texas Rules of Civil Procedure provide that "Any party may intervene, subject to being stricken out by the court for sufficient cause. . . ."¹²

While these rules have not been developed in cases involving uninsured motorist insurance, they cannot be disregarded where an insurance company attempts to intervene in a suit against the uninsured motorist. Whether or not the insurer is allowed to intervene must be determined at least in part on the basis of these rules.

INTERVENTION IN UNINSURED MOTORIST CASES

The only Texas case reported to date concerning intervention by an insurer in a suit brought by its insured against an uninsured motorist is *Allstate Insurance Company v. Hunt*.¹³ Allstate had issued an automobile liability insurance policy to Hunt which included uninsured motorist coverage. In 1964 Hunt was involved in an accident with Eurice Rose and sued Rose to recover for injuries sustained in this accident. In a letter to Hunt, Allstate agreed to be bound, regarding both liability and damages, by the judgment in the suit against Rose. At the trial, Allstate's attorney attempted to intervene and participate in the defense of the suit against the uninsured. Allstate's attorney was excluded from the trial; the court holding that his conduct on behalf of the defendant was in conflict with the interests of Allstate's insured. The trial proceeded and Hunt obtained a judgment against Rose. Thereafter, Hunt and Allstate appeared before the trial court and, based on the prior letter of Allstate, the insurance policy, other evidence of record, and the judgment against Rose, the trial court awarded Hunt the full amount of the uninsured motorist coverage. Allstate appealed the decision denying intervention. The court of civil appeals in Houston affirmed the trial court and held that an insurer could not defend the uninsured motorist because of the potential conflict of interest created by such a procedure.¹⁴ The court of civil appeals pointed out that:

If the insured brings suit against the uninsured motorist and the company is permitted to defend such uninsured motorist, the company would attempt to prove either the negligence of its own

¹⁰ *Ragland v. Wisrock*, 61 Tex. 391 (1884); *Van Bibber v. Geer*, 12 Tex. 15 (1854).

¹¹ *McAdow Motor Co. v. Luckett*, 131 S.W.2d 267 (Tex. Civ. App.—El Paso 1939, no writ).

¹² TEX. R. CIV. P. 60.

¹³ 450 S.W.2d 668 (Tex. Civ. App.—Houston [14th District] 1970, writ granted).

¹⁴ *Id.*

insured, or the uninsured motorist's freedom from negligence. Either determination would inure to the benefit of the insurance company. The company interests are therefore opposed to those of its own insured.¹⁵

It cannot be argued that the insurer would in fact benefit by either of the determinations for which the court expressed its regard. However, a different conclusion may be reached if the possibilities of the case are looked at from a broader point of view than the conflict of interests consideration. Suppose that the uninsured motorist could show that the insured was contributorily negligent, or that he (the uninsured) was free from negligence. In either situation, the insured could neither recover from the uninsured motorist, nor from the insurance company. The insured's right to collect under the policy would be no more affected by the insurance company, as intervenor, proving he was not entitled to recover, than if the defendant-uninsured motorist alone accomplished the same result. In either case the issue for determination is whether the insured has the right to recover from the uninsured motorist. It may be presumed that the insured would be able to prove his right to recover, if he had such a right, regardless of who represented the uninsured motorist, or who intervened. If the insured could prove his right to recover in a suit against the uninsured motorist alone, but could not prove it if the insurance company were allowed to intervene, it would probably be because the insurance company has information which would preclude recovery. A problem thus arises, whether justice can be better served by allowing the recovery from the uninsured motorist when in fact recovery should not have been allowed; or by permitting the insurance company to intervene and oppose the interests of its own insured. It is submitted that the insurer could not disprove the insured's case unless there was, in fact, evidence which showed the uninsured motorist was not liable, and therefore, the insured could not be truly prejudiced by the apparent conflict of interests resulting from the intervention of the insurer on behalf of the uninsured motorist.

There are very few Texas cases concerning uninsured motorist coverage, and no cases earlier than *Allstate v. Hunt* concerning intervention by the insurance company on behalf of the uninsured motorist. However, there are cases in other jurisdictions which have decided this particular point which could be helpful in shaping Texas law.

A case providing a different viewpoint from that in *Allstate v. Hunt* is *State v. Craig*.¹⁶ There the insured filed suit against the uninsured motorist, who later defaulted. State Farm's motion to intervene on

¹⁵ *Id.* at 672.

¹⁶ 364 S.W.2d 343 (Mo. Ct. App. 1963).

behalf of the defendant was overruled. State Farm then initiated a proceeding to mandamus the trial court to allow it to intervene in the suit. The appellate court allowed limited intervention on the issues of liability and damages holding that the company should be permitted to intervene as a matter of right.¹⁷ Essential to this right is that the intervenor will either gain or lose by direct operation of the judgment to be rendered.¹⁸ The court saw no conflict of interest between the company and neither the insured nor the uninsured motorist. The company was not the insurer of the defendant, nor was it called to defend the insured against a counter-claim by the defendant.¹⁹ This is essentially the same situation as *Allstate v. Hunt*, except there was no indication that the uninsured motorist had defaulted. If there is truly a conflict of interest, as the Texas court of civil appeals has held, and if this is a determining factor in denying or allowing intervention, it is presumed that Allstate would not have been allowed to intervene even if the uninsured motorist had defaulted. In allowing intervention the Missouri court noted this injustice by stating "If this be true, the insurer . . . will be denied its day in court for the determination of . . . issues which directly affect its liability."²⁰

In *Wert v. Burke*,²¹ two general conditions were required for the insurer to intervene on behalf of an uninsured motorist in a suit by the insured: (1) the possibility of inadequate representation of the interests of the applicant for intervention; and (2) the possibility that the judgment would be binding on the applicant.²² More specifically, the court placed the following qualification on the insurer's right to intervene: (1) that it be first established that the defendant is uninsured; (2) that the intervenor acknowledge that it will be bound by the judgment, subject to the right of appeal; (3) that the intervenor take the case with the issues as joined, unless it can show that it can prove otherwise or that it should be allowed to raise a new issue; and (4) such other conditions as the trial court may reasonably impose.²³ Whether the judgment against the uninsured motorist would or might be binding on the insurer without it taking part in the suit and without its agreement to be so bound has not been decided in Texas. It appears that the wording of the standard policy precludes the judgment from having

¹⁷ *Id.* at 349.

¹⁸ *Id.* at 346.

¹⁹ *Id.*

²⁰ *Id.* at 347.

²¹ 197 N.E.2d 717 (Ill. Ct. App. 1964).

²² *Id.* at 719.

²³ *Id.* at 720.

that effect.²⁴ However, this may not be the case where the insurer cannot prove a good-faith refusal of consent to being bound.

In *Allstate Insurance Company v. Pietrosh*,²⁵ the insurer was given notice of the insured's uninsured motorist claim, and of the suit against the uninsured motorist, but refused to consent to the suit. The court held that the insurer had the burden of affirmative action to ". . . consent to suit . . . or intervene."²⁶ Since the insurer was given the opportunity to intervene, the judgment thereafter obtained against the uninsured motorist bound the insurer despite the contrary endorsement in the policy. The court acknowledged that its holding forces the insurer to intervene but concluded that "the avoidance of multiple litigation carries the greater weight."²⁷ The decision clearly implies that intervention would be allowed in situations where the insurer consents to be bound by the judgment against the uninsured motorist. Two Illinois cases²⁸ have held the insurer bound by the judgment notwithstanding the lack of consent and the policy clause against being bound without consent. In both cases, where the insurance company furnished no reason for its refusal to consent, the court held that the insurer's consent to sue was not required, in order to bind the insurer by a judgment against the uninsured motorist. In *Levy v. American Automobile Ins. Co.* the court found an implied promise not to arbitrarily or unreasonably withhold its consent.²⁹ In *Andeen v. Country Mutual Ins. Co.* the insurer should either have consented to suit or demanded arbitration.³⁰

A line of Georgia cases base their decision as to intervention on the Georgia Uninsured Motorist Act.³¹ This act, unlike the Texas statute, entitles the insurer to "file pleadings, and take other action allowable by law in the name of either the known (uninsured) owner or operator or both or itself"³² in an action by its insured. The insurer is allowed to dispute jurisdiction and assert the non-liability of the uninsured

²⁴ Part IV of the Texas Family Combination Automobile Policy provides:

No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive, as between the insured and the company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

²⁵ 454 P.2d 106 (Nev. 1969).

²⁶ *Id.* at 110.

²⁷ *Id.* at 111.

²⁸ *Levy v. American Automobile Insurance Co.*, 175 N.E.2d 607 (Ill. App. Ct. 1961); *Andeen v. Country Mutual Insurance Co.*, 217 N.E.2d 814 (Ill. App. Ct. 1966).

²⁹ 175 N.E.2d 607, 611 (Ill. App. Ct. 1961).

³⁰ 217 N.E.2d 814, 818 (Ill. App. Ct. 1966).

³¹ GA. CODE ANN. art. 56-407.1 (Supp. 1968).

³² GA. CODE ANN. art. 56-407.1(d) (Supp. 1968).

motorist who defaults in the suit.³³ Under the act, the injured party's insurance company may defend an action against an unknown motorist. Where there is an action against a known uninsured motorist a copy of the petition and process must be served upon the insured party's insurance company. To show the liability of an insurance company under an uninsured motorist policy it is only necessary to show the rendition of a judgment against the uninsured motorist.³⁴

In *State Farm Mutual Automobile Ins. Co. v. Glover*, the Georgia Court of Appeals stated that it did not consider a conflict of interest to exist between the insurer and insured, any more than would logically exist if the insurer denied coverage under the contract.³⁵ The court limited its decision to cases in which the defendant uninsured motorist defaults and the insurance company has evidence sufficient to raise a jury question as to its own liability.³⁶ The court was also of the opinion that the circumstances of the particular case should determine whether or not the insurer would be allowed to intervene.³⁷

The *Glover* decision was not applied in *American Mutual Ins. Co. of Boston v. Aderholt*.³⁸ In this case the insurer brought an action for a declaratory judgment to determine its rights under an exclusion clause of the policy. The court held that the insurer could intervene in order to contest the liability of the uninsured motorist, but it could not intervene for a declaration of its rights under an exclusion clause of the policy.³⁹ The case, by implication, distinguishes the liability of the uninsured motorist in tort from the liability of the insurance company in contract. Even binding itself by the judgment against the uninsured motorist, as to liability and damages, the insurer may still avoid paying its insured anything by virtue of the conditions attached to the coverage. Bringing such issues into the suit against the uninsured motorist would be clearly irrelevant to his liability and to the amount of damages, and the insurance company is properly prohibited from bringing up such issues which confuse the trial of the case and make it more complex.

The *Glover* decision was extended in *State Farm Mutual Automobile Ins. Co. v. Brown*⁴⁰ to situations where the uninsured motorist is not in default in the suit brought by the insured. The court refused to distinguish the *Brown* and *Glover* cases on the basis of the default by the defendant in *Glover*.⁴¹ The opinion of the court was that the insurer

³³ *State Farm Mutual Automobile Insurance Co. v. Glover*, 149 S.E.2d 852 (Ga. Ct. App. 1966).

³⁴ *Id.* at 856.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ 151 S.E.2d 833 (Ga. Ct. App. 1966).

³⁹ *Id.* at 834.

⁴⁰ 152 S.E.2d 641 (Ga. Ct. App. 1966).

⁴¹ *Id.* at 646.

has a direct and immediate interest to protect when its insured sues an uninsured motorist, and "it stands to lose or gain by the direct effect of the judgment,"⁴² regardless of whether the uninsured motorist defends himself or not.⁴³

In *Continental Insurance Company v. Smith, et al.* the court pointed out that a condition for intervention is the obligation of the insurer to protect the insured within the limits of the uninsured motorist coverage and to pay any judgment obtained against the defendant.⁴⁴ It is because of this obligation that the company can establish a right of intervention. If the company does not recognize or assume this obligation, the company will lose the right to intervene. Where the company is not willing to concede protection it has no right to intervene in the action.⁴⁵ In other words, where the company had contractual grounds for avoiding the policy, the liability of the uninsured motorist will not be conclusive of the liability of the company. Therefore, the company has no interest which requires protection and thus no right to intervene.

The rule from *Smith* was applied in *United Services Automobile Association v. Logue* to overrule an insurer's motion to intervene in an action by its insured against an uninsured motorist.⁴⁶ In this case, the insurer sought to avoid its obligations under the uninsured motorist coverage because of the insured's alleged breach of certain policy conditions. The court reiterated the Georgia position that intervention is allowed only where the insurer concedes its obligation, within the limits of the uninsured motorist coverage, to pay any judgment obtained against the defendant uninsured motorist.⁴⁷ In refusing to concede that the defendant is an uninsured motorist and in seeking to avoid the coverage because of plaintiff's (insured's) policy conditions, the insurance company was expressly negating the basis for its contention that it had an interest which might be prejudiced by inadequate representation or that it might be bound by a judgment in the action.⁴⁸ One of these latter concessions must be made by the insurance company seeking to intervene, under the Georgia Civil Practice Act.⁴⁹

In Virginia, which has one of the most comprehensive statutes requiring uninsured motorist insurance, the legislature has decided that the insurance company does have sufficient interest to intervene in a suit

⁴² *Id.*

⁴³ For holdings on grounds similar to *Brown*, see: *State Farm Mutual Automobile Ins. Co. v. Jiles*, 154 S.E.2d 286 (Ga. Ct. App. 1967); and *Continental Ins. Co. v. Smith et al.*, 155 S.E.2d 713 (Ga. Ct. App. 1967).

⁴⁴ 155 S.E.2d 713 (Ga. Ct. App. 1967).

⁴⁵ *Id.* at 715.

⁴⁶ 162 S.E.2d 12 (Ga. Ct. App. 1968).

⁴⁷ *Id.* at 13.

⁴⁸ *Id.* at 14.

⁴⁹ GA. CODE ANN. art. 81A-124(a) (Supp. 1968).

against the uninsured motorist.⁵⁰ The statute expressly provides that the insured who sues the uninsured motorist must serve his insurance company with a copy of the process, giving the company the right to file pleadings in the name of the defendant or in its own name.⁵¹ The owner or operator of the uninsured vehicle retains the right to hire his own counsel and take action in his own interest in connection with the case.⁵² The Virginia statute is discussed at some length in *O'Brien v. Government Employees Insurance Company*.⁵³

In *O'Bryan v. Leibson*,⁵⁴ the plaintiff insured brought suit against an uninsured motorist and against his own insurance company to collect under the policy. The uninsured motorist counter-claimed and the court held that the plaintiff's insurance company could not defend plaintiff against the counter-claim and at the same time defend itself against the plaintiff's uninsured motorist claim because of conflict of interests.⁵⁵ The insurance company had the right to defend itself in this suit, but it could not hire attorneys to represent its insured against the counter-claim, a right it had under the policy.

The possibility of a counter-claim is always present in this type of suit, and was one of the reasons the Houston Court of Civil Appeals refused Allstate's application for intervention.⁵⁶ Where the uninsured motorist files a counter-claim against the insured, the claim will ultimately be against the insurer of the plaintiff under the bodily injury coverage of the plaintiff's policy. One of the standard Texas policy clauses provides that the company will have the right to defend the insured when an action is brought against him.⁵⁷ To have the insurer defend the uninsured motorist by way of intervention, and at the same time assert its right to defend the counter-claim on behalf of the plaintiff could truly create a conflict of interest situation. The Kentucky Court, in *Leibson*, did not allow the insurance company to decide which interest it wanted to protect—its interests relating to the uninsured motorist coverage or its interests relating to the bodily injury coverage. In such cases it usually results that the bodily injury insurance has higher limits than the uninsured motorist insurance, the latter being limited to the amount required under the financial responsibility laws of the state.⁵⁸

⁵⁰ VA. CODE ANN. art. 81A-124(a) (Supp. 1968).

⁵¹ VA. CODE ANN. art. 38.1-381(e)(1) (Supp. 1968).

⁵² *Id.*

⁵³ 372 F.2d 335 (3d Cir. 1967).

⁵⁴ 446 S.W.2d 643 (Ky. 1969).

⁵⁵ *Id.* at 644.

⁵⁶ *Allstate Ins. Co. v. Hunt*, 450 S.W.2d 668 (Tex. Civ. App.—Houston [14th District] 1970, writ granted).

⁵⁷ Part I of the Texas Family Combination Automobile Policy provides that:

" . . . the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy. . . ."

⁵⁸ TEX. INS. CODE ANN. art. 5.06-1(1) (Supp. 1969).

As a practical matter, where the company is allowed to defend only one of the parties, it would appear to be in its greatest interest to defend its own insured against the counter-claim, and this is probably what a company will do if given a choice. The Kentucky court permitted the insurance company to be joined as a defendant in the suit. It is unlikely that Texas would allow this because of its public policy against revealing the presence of insurance in a case.

By giving up its right to defend a counter-claim, the insurance company would overcome one objection to intervention. But the insured has the right to have the company defend him against the counter-claim. Should the insured be allowed to force the company to give up its position as intervenor in order to defend him against the counter-claim? Would the potential of a counter-claim, with a requirement to defend the insured, be sufficient reason for the company to refuse to consent to be bound by the judgment against the uninsured motorist?

Not all of the jurisdictions in which the issue has arisen have allowed the insurance company to take the side of the uninsured motorist. *Holt v. Bell*⁵⁹ involved an attempt by the insured to join his insurer as a party defendant in the suit. The court declared this to be a misjoinder of parties. The decision would probably be the same in Texas, because of public policy against disclosure of insurance coverage in personal injury cases. The decision appears applicable to an intervention situation. The court pointed out that placing the insurer in the position of a defendant virtually made him the liability insurer of the defendant thus interested in defeating plaintiff's claim.⁶⁰ This is basically the same situation that develops when the insurer intervenes on behalf of the uninsured motorist.

In *Allstate v. Hunt* the court noted a possible conflict of interest between the insurer and the uninsured motorist if intervention was allowed.⁶¹ However, where the insurer will be bound by the judgment it is unlikely that the insurer will intentionally prejudice the uninsured motorist's case.

A possible problem in allowing intervention is the possibility that the defendant be indirectly prejudiced, because of insurance in the case. This is the same possibility that exists between the insurer and insured, when the insured is sued. The prejudice can be more damaging, however, to an uninsured motorist than to an insured who is sued. As mentioned earlier, many persons carry liability insurance in excess of the financial responsibility limits. A finding of liability in a bodily injury case might hurt the insurance company more if prejudice does

⁵⁹ 392 P.2d 361 (Okla. 1964).

⁶⁰ *Id.* at 363.

⁶¹ *Allstate Ins. Co. v. Hunt*, 450 S.W.2d 668, 671 (Tex. Civ. App.—Houston [14th District] 1970, writ granted).

exist, but if the insured had sufficient coverage for himself, there is no greater personal loss to him. However, the situation is different with the uninsured motorist. If a verdict is excessive because of the insurance, the uninsured motorist personally will have to pay the entire excessive award. He will have to pay the insured the amount of the judgment above the insurance coverage, and in a later suit, he will have to pay the insurance company the amount to which the company became subrogated by virtue of its payments to the insured under the policy. The fact that the defendant failed to obtain insurance which would have protected him from personally having to pay the judgment should not lessen the rights and protection to which he is entitled in a court of law.

CONCLUSION

The right of an insurance company to intervene must be balanced against the rights of the parties to a fair trial. In cases where the uninsured motorist protests to being represented by the insurer, the company should not be allowed to force itself on him. He is not the company's insured and owes no duty to the company. By the same token, the fact that he owes no duty to the company makes it possible for him to default in the suit against him, and the company is helpless to do anything about it. One way that the company's interests could be protected in a difficult situation is for the court to prevent this default from being binding on the insurer. A second method of protection is to allow the insurer to intervene on its own behalf as a party defendant. Restrictions could be placed on the company's right to intervene, similar to those which have been imposed in other jurisdictions.

Where the uninsured motorist does defend himself, it is reasonable to assume that his attorney will do everything possible to protect him from liability. It is doubtful that the insurance company would do more. There is no real reason for allowing the insurance company to intervene in this situation. If the insurance company believes, after the insured has obtained judgment against the uninsured motorist, that the insured is not entitled to recover, it may force the insured to bring action against the company. The company would attempt to prove the reasons for not considering itself bound by the judgment against the uninsured motorist. This is essentially what happened in *Allstate v. Hunt*, and it is a fair method of resolving the problem of protecting the insurance company's rights.