

Supreme Court of Nevada.

ESTATE OF Matthew LOMASTRO, Deceased, by and through Steven LOMASTRO and Colleen Morris, his Parents and Legal Guardians; Steven Lomastro, Individually; and Colleen Morris, Individually, Appellants/Cross-Respondents,

v.

AMERICAN FAMILY INSURANCE GROUP, A Foreign Corporation, Respondent/Cross-Appellant.

No. 49125.

Oct. 30, 2008.

Background: Parents of driver who died in single-vehicle accident involving an uninsured vehicle brought negligent entrustment action against vehicle's owner. After parents obtained a default against vehicle owner but before default judgment was entered, parents' uninsured motorist (UM) insurer intervened. Parents amended their complaint to assert claims against UM insurer. The Eighth Judicial District Court, Clark County, Sally L. Loehrer, J., granted insurer summary judgment, and parents appealed.

Holdings: The Supreme Court, Hardesty, J., held that:

- (1) UM insurer was bound by default that was entered against owner of uninsured vehicle before insurer intervened in parents' action;
- (2) a collision between two vehicles was not required in order to recover uninsured motorist (UM) benefits, and UM benefits could cover single-vehicle accidents;
- (3) genuine issue of material fact precluded summary judgment on parent's bad faith claim against insurer; and
- (4) genuine issues of material fact precluded summary judgment on parents' Unfair Claims Practices Act claims against insurer.

Affirmed in part, reversed in part, dismissed in part, and remanded.

Headnote Citing References On appeal, the LoMastros challenge the district court's order granting summary judgment to American Family, arguing that the district court erred when it found that Nevada

law required physical contact between an uninsured motorist and the insured or the insured's vehicle to recover uninsured motorist benefits. American Family counters that uninsured motorist coverage does not apply to single-vehicle accidents because the relevant statutes and cases contemplate the negligence of another driver and physical contact with another vehicle. American Family makes no persuasive argument for requiring physical contact between two vehicles to recover uninsured motorist benefits. We agree with the LoMastros; in so doing, we clarify that the “physical contact” requirement in NRS 690B.020(3)(f)( I ) applies only to hit-and-run accidents or those involving unidentified motorists.

By focusing on cases from other jurisdictions considering the “physical contact” requirement, which is only present here in the hit-and-run provisions of the statute and the LoMastros' policy, American Family claims that a majority of states have held that uninsured motorist benefits are unavailable in single-vehicle accidents. We have never reversed an award of uninsured or underinsured motorist benefits arising from a single-car accident based solely on the fact that there was no physical contact with another car.FN50 Furthermore, whether an accident involves one vehicle or more than one vehicle does not impact courts' determinations regarding whether a claimant's bodily injury was caused by an accident that arose from “the ownership, maintenance or use of the uninsured ... motor vehicle.” FN51 Clearly, the \*351 “physical contact” requirement only applies to cases that allege the negligence of an unidentified or hit-and-run driver, and uninsured motorist benefits should be available when an insured person is legally entitled to recover from the owner or operator of a vehicle that meets one of NRS 690B.020(3)'s statutory definitions for uninsured motor vehicle. Therefore, it was not necessary for the district court to apply the physical contact requirement in this case,FN52 and we reverse the district court's summary judgment.

FN50. See *Baker v. Criterion Insurance*, 107 Nev. 25, 2

## CONCLUSION

We affirm the district court's order that American Family was bound by the entry of default against Leach because entry of default binds an insurance company intervenor as to the liability of an uninsured motorist defendant if the insurance company had notice of the litigation and the plaintiff's intent to seek entry of default, but failed to intervene. On remand, American Family may contest only the amount of damages in the claims against Leach unless it successfully moves to set aside the entry of default.

[21] Headnote Citing References The district court erred when it granted summary judgment to American Family. The law does not, in all cases, require physical contact between at least two cars for

recovery of uninsured motorist benefits; therefore, we reverse the district court's grant of summary judgment as a matter of law. Because reversal of summary judgment on that matter creates a genuine issue of material fact regarding the LoMastros' allegation that American Family denied their claim in bad faith, we necessarily reverse the district court's grant of summary judgment on that claim. The district court further erred when it granted summary judgment for American Family on the LoMastros' claims of violation of the Unfair Claims Practices Act because genuine issues of material fact exist as to the reasonableness of American Family's investigation and the manner in which it denied the LoMastros' claim. Therefore, we reverse the district court's summary judgment to American Family on all grounds and remand the matter for further proceedings.FN55