**WISCONSIN SUPREME COURT**
**WEDNESDAY, FEBRUARY 10, 2010**
**9:45 a.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Waukesha County Circuit Court decision, Judge Kathryn W. Foster, presiding.*

2008AP919 Zarder v. Humana Insurance Co.

In this case, the Supreme Court is asked to clarify the meaning of "hit-and-run" in an uninsured motorist policy, and in an insurance statute, as applied to the facts of this case.

Some background: On Dec. 9, 2005, an unidentified vehicle struck 12-year-old Zachary Zarder while he was riding his bicycle. The vehicle stopped, and three males exited the vehicle. One male asked Zarder if he was okay. When Zarder replied that he was okay, the three males got back into their car and drove away.

Zarder also told other witnesses that he was just scared and wanted to stay where he was for a moment. The witnesses then left the area. It was not initially known, but Zarder did have some serious injuries, including two fractures that required two surgeries and resulted in medical bills above the coverage limits of Zarder's family's medical insurance.

Zarder and his parents filed a lawsuit against Acuity seeking uninsured motorist coverage under the family's automobile policy. Zarder claimed that the collision with the vehicle was covered under the Acuity policy because it was a "hit-and-run" accident with an unidentified motor vehicle.

Acuity moved the circuit court for a declaration that there was no coverage because the accident was not a "hit-and-run" because the driver had stopped and inquired as to whether Zarder was okay. The circuit court denied the motion.

The Acuity policy promised to pay damages for bodily injury sustained by an insured person that was caused by the ownership, maintenance or use of an uninsured motor vehicle. The policy defined an "uninsured motor vehicle" as, among other things, "[a] hit-and-run vehicle whose owner or operator is unknown" and which strikes an insured.

Although the circuit court's decision was not a final order or judgment, the Court of Appeals granted leave to file an appeal "because the issue is novel and because deciding it would further the administration of justice by definitively deciding the meaning of run in 'hit-and-run.'"

Acuity has asked the Supreme Court to review two issues:

1. Does the Acuity policy of insurance mandate uninsured motorist coverage for an alleged "hit-and-run" accident involving an unidentified motor vehicle and an insured where there is no "run," as that term is understood in the context of Wis. Stat. § 632.32(4)?

2. When an insurance policy covers "hit-and-run" as part of an uninsured motorist provision and the policy does not define the term, does "run" mean to flee without stopping?

A decision also could clarify the scope of the Court of Appeals' power to declare certain statements in a Supreme Court decision to be non-binding dicta and then to review an issue without regard to the Supreme Court's prior statements.