1.21   INSTRUCTIONS TO JURY IN HIT-AND-RUN CASES IN WHICH THE COMMISSIONER OF INSURANCE IS IMPLEADED AS A DEFENDANT (Approved 2/89)[1]

In this case, the Commissioner of Insurance acts as the defendant. The Commissioner is only a nominal defendant. The Commissioner was not involved personally in any way in the events that gave rise to this lawsuit. The Commissioner is named as the defendant because the plaintiff charges that the accident was caused by the negligence of an unknown and unidentified driver, who, therefore, cannot be named as the defendant.

In such a situation the law provides that the Commissioner of Insurance be named as the defendant to enable plaintiff's claim to be litigated. This case must therefore be tried just as though the (alleged) unknown and unidentified driver were here.

NOTE TO JUDGE

The above charge was formulated to cover hit and run cases in which the Commissioner is impleaded as the defendant pursuant to the statutory right to do so (*N.J.S.A*. 39:6-78 and -79) and is intended to explain why the Commissioner is a defendant.

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[1]*Note:* In the *Dalton v. Gesser*, 72 *N.J. Super*. 100 (App. Div. 1962) reference in the opening to the jury by counsel that he was appearing for the Unsatisfied Claim and Judgment Fund of the State of New Jersey was held prejudicial error because he thereby indirectly informed the jury that the defendant was not insured and that any verdict against such defendant was to be paid out of a public fund.

It is suggested that the above instructions may be given before counsel open to the jury in order to satisfy the natural curiosity of the jurors who are about to hear a case involving the Commissioner of Insurance as a defendant.

It is also suggested that prior to opening, the court caution counsel, out of jury's hearing, to make no reference to the "Fund," or to the fact that any judgment against the Commissioner is payable from the "Fund."

The word "alleged" may be added in the second paragraph if the existence of an unknown and unidentified driver who was involved in the accident is in dispute.