§ 5218. Procedure for "hit and run" cases. (a) Any qualified person having a cause of action for death or personal injury arising out of the ownership, maintenance or use of a motor vehicle in this state, when the identity of the motor vehicle and of the operator and owner cannot be ascertained or it is established that the motor vehicle was at the time of the accident, in the possession of a person without the owner's consent and that the identity of such person cannot be ascertained may, upon notice to the corporation, apply to a court for an order permitting an action therefor against the corporation in that court.

(b) The court may proceed upon the application in a summary manner and may make an order permitting the action when after a hearing it is satisfied that:

(1) the applicant has complied with the requirements of section five thousand two hundred eight of this article;

(2) the applicant is a qualified person;

(3) the injured or deceased person was not at the time of the accident operating an uninsured motor vehicle or operating a motor vehicle in violation of an order of suspension or revocation;

(4) the applicant has a cause of action against the operator or owner of the motor vehicle;

(5) all reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and operator and either the identity of the motor vehicle and the owner and operator cannot be established, or the identity of the operator, who was operating the motor vehicle without the owner's consent, cannot be established; and

(6) the application is not made by or on behalf of an insurer or surety under circumstances described in paragraph six of subsection (a) of section five thousand two hundred eleven of this article.

(c) In any action in which the plaintiff is a qualified person, for the death of, or bodily injury to, any person arising out of the ownership, maintenance or use of a motor vehicle in this state and judgment is rendered for the defendant on the sole ground that the death or personal injury was occasioned by a motor vehicle: (i) the identity of which, and of the owner and operator of which, has not been established, or (ii) which was in the possession of some person other than the owner or his agent without the consent of the owner and the identity of the operator has not been established, that ground shall be

stated in the judgment. The plaintiff, upon complying with paragraph one of subsection (a) of section five thousand two hundred eight of this article, may within three months from the date of the entry of the judgment make application to bring an action upon the cause against the corporation in the manner provided in this section.

(d) In any action commenced in respect of the death or injury of any person arising out of the ownership, maintenance or use of a motor vehicle in this state the plaintiff shall be entitled to make the corporation a party defendant if the court has entered the order provided for in subsection (a) of this section.

(e) The corporation may generally deny the allegations of the complaint and shall not be required to set forth the facts upon which it relies. It may assert any defense which would have been available to the operator or owner if the action had been brought against them and process in the action had been duly served within this state upon them.

(f) (1) The corporation may settle without court approval any claim or action if the board, after due deliberation: (i) determines that the claim or action is asserted or brought pursuant to this section; (ii) is satisfied that the settlement is fair; and (iii) approves payment which in no event shall exceed the applicable amount specified in section five thousand two hundred ten of this article.

(2) Settlement of claims and actions without court order shall not apply to settlement of claims or actions by infants or judicially declared incompetents.

(g) (1) Any judgment obtained pursuant to this section shall be reduced by any amount recovered by the plaintiff as specified in paragraph seven of subsection (a) of section five thousand two hundred eleven of this article. Upon conclusion of all proceedings, including appeals and reviews, the court shall order the corporation to pay the plaintiff the amount of the judgment or the applicable amount specified in subsection (a) of section five thousand two hundred ten of this article, whichever is less.

(2) Upon payment by the corporation it shall be subrogated to the cause of action of the judgment creditor against the operator and owner of the motor vehicle by which the accident was occasioned. It may bring an action against either or both of such persons for the amount of the damage sustained by the judgment creditor when the identity of either

becomes known. It shall be entitled to recover the amount of the damage out of any funds which would be payable in respect to the death or injury under any policy of insurance which was in force at the time of the accident. Money collected in excess of all amounts paid by the corporation shall be paid to the judgment creditor.