

FILED

MAY 28 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARLIN R. HESSE,

)

Plaintiff-Appellant,

)

Filed May 28, 1985

180

vs.

)

**HARTFORD CASUALTY INSURANCE
COMPANY,**

)

5-110

84-1309

)

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County - Harry J. Perkins,
Judge.

Plaintiff appeals from summary judgment granted for the defendant in an
action for breach of contract and misrepresentation. **AFFIRMED BY OPERATION
OF LAW.**

David S. Wiggins and John C. Conger of Williams, LaMarca, Marcucci &
Wiggins, P.C., West Des Moines, for plaintiff-appellant.

Frank A. Comito and George S. Eichhorn of Comito & Capps, Des Moines,
for defendant-appellee.

Heard by Donielson, P.J., and Snell and Sackett, JJ., but considered en banc.

PER CURIAM

Plaintiff appeals from summary judgment granted for defendant in an action for breach of contract and misrepresentation. Three judges would affirm the decision of the district court and three would reverse. Pursuant to Iowa Code section 602.5106(1) (1985), the decision of the district court is affirmed by operation of law.

AFFIRMED BY OPERATION OF LAW.