

1986

# Gordon J. Swenson v. Chrysler Corporation : Petition for Rehearing

Utah Court of Appeals

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BRIEF

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CKET NO. 860276-CA

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IN THE UTAH COURT OF APPEALS

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GORDON J. SWENSON,	:	
Plaintiff and Appellant,	:	
vs.	:	Case No. 860276-CA
CHRYSLER CORPORATION, <u>et al.</u> ,	:	
Defendants,	:	
PRUDENTIAL GENERAL	:	Priority No. 13-b
INSURANCE COMPANY,	:	
Defendant and Respondent.	:	

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PETITION FOR REHEARING

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Appeal from the Judgment of the  
Third Judicial District Court  
In and for Salt Lake County, State of Utah,  
The Honorable Judith M. Billings, Presiding

JOHN B. ANDERSON  
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Attorney for Respondent

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 Plaintiff and Appellant, : Case No. 860276-CA  
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 Defendants, : Priority No. 13-b  
 :  
 PRUDENTIAL GENERAL :  
 INSURANCE COMPANY, :  
 :  
 Defendant and Respondent.

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PETITION FOR REHEARING

This Court has construed the subject insurance contract in a manner which reads entirely out of the policy its "collision coverage" and "comprehensive coverage" provisions. This Court has premised its decision on the view, as stated in its Memorandum Decision (page 3), that:

"Machinery" means "machines as a functioning unit." [Citation omitted.] "Machine" means "an assemblage of parts". [Citation omitted.] ... There was clearly a failure or breakdown of "an assemblage of parts" constituting "a functioning unit;" i.e., appellant's automobile. [Emphasis added.]

Coverage of "a car" is basic to both the "collision coverage" and "comprehensive coverage" provisions of the policy, each of which is subject to the "wear and tear" exclusion. The coverage provisions provide:

**Collision Coverage**

[We'll pay for accidental damage to a car, including its equipment, if it is involved in a collision with another object... or rolls over. [Emphasis added.]

**Comprehensive Coverage**

[W]e'll pay for any direct and accidental loss of or damage to a car, including its equipment, caused by anything other than collision... [Emphasis added.]

(R. 224, Addendum D to Appellant's Brief.)

If the automobile or "car" as a whole (rather than, for example, its engine or its transmission), is deemed to be the "assemblage of parts" or the mechanical "functioning unit", damage to which is excluded from coverage as "mechanical breakdown or failure", then, as a matter of logical necessity, neither of the so-called "coverages" quoted above covers anything.

The plaintiff has pursued this appeal on principle, because it is obvious that a majority of Prudential's policyholders would not be in a position to do anything but fold in response to the insult and pressure tactics used against the plaintiff even prior to bringing suit. Unfortunately, however, Prudential now benefits enormously under the Court's holding, since it has obtained an interpretation of its policy under which numerous Prudential policyholders throughout the state of Utah will be left without "collision" or "comprehensive" coverage, for which they have paid and which they have no reason to believe is not in effect.

(Because of the above concern, and the extent to which the plaintiff takes it seriously, the plaintiff would be willing to stipulate that any recovery for his damages less out-of-pocket costs (in other words, any reimbursement for his time

spent on this case) be donated for some charitable purpose. The objective of this offer is to correct any unstated assumption, which may or may not underly the Court's holding, with respect to the equities or the plaintiff's motives.)

If Prudential had paid the plaintiff's claim in good faith, the plaintiff and Prudential could have joined as co-plaintiffs in an action both for the plaintiff's additional damages and for Prudential's damages, under subrogation, against the other defendants. Prudential, because of its subrogation rights, could have recovered the amount of its settlement with the plaintiff under the policy. Since the plaintiff and Prudential would have had every reason to cooperate, the action could have been completed, and settlement obtained, with large savings of time and expense for both the plaintiff and Prudential.


However, Prudential did not even cross-claim against the other defendants. Prudential failed to do what was in its own and its policyholder's best interest. Instead, Prudential reflexively took the course which (1) was most expensive and burdensome to itself, (2) was most expensive and burdensome to its policyholder, and (3) relied on an interpretation in Prudential's favor of ambiguities in a form contract which Prudential had prepared.

The Utah Supreme Court has consistently held that policies of insurance are to be strictly construed against the insurer. Utah Farm Bureau Mutual Insurance Company v. Orville

Andrews & Sons, 665 P.2d 1308 (Utah 1983); Christensen v. Farmers Insurance Exchange, 21 Utah 2d 194, 443 P.2d 385 (1968); P. E. Ashton Company v. Joyner, 17 Utah 2d 162, 406 P.2d 306 (1965); Stout v. Washington Fire and Marine Insurance Company, 14 Utah 2d 414, 385 P.2d 608 (1963). Also, the Utah Supreme Court has consistently held that a contract is to be interpreted so as to give effect to the entire agreement, without ignoring or rendering meaningless any part thereof. Larrabee v. Royal Dairy Products Co., 614 P.2d 160 (Utah 1980); Jones v. Hinkle, 611 P.2d 733 (Utah 1980); Minshev v. Chevron Oil Company, 575 P.2d 192 (Utah 1978). This Court should not adopt an interpretation of Prudential's policy which ignores and renders meaningless entire paragraphs of the agreement. Nor should this Court allow Prudential, without notice and without any revision in the policy's terms, to deny both collision and comprehensive coverage to policyholders who assume that the "easy reading" policy which they have purchased insures against the risks which it describes.

RESPECTFULLY SUBMITTED this 18th day of April, 1988.

ANDERSON & HOLLAND

  
JOHN B. ANDERSON  
GORDON J. SWENSON

CERTIFICATION

The undersigned attorney of record hereby certifies that this Petition for Rehearing is presented in good faith and is not presented for delay.

DATED THIS 18th day of April, 1988.

Gordon Swenson

CERTIFICATE OF DELIVERY

I hereby certify that on this 18th day of April, 1988, I hand-delivered four (4) true and correct copies of the foregoing Petition for Rehearing to Terry M. Plant, HANSON, EPPERSON & SMITH, 175 South West Temple, #650, Salt Lake City, Utah 84101.

Gordon Swenson