

1996

Viking Insurance Company of Wisconsin v. Allen Coleman, Rene B. Peterson, Trans Coastal Trucking, and Utah Department of Transportation : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Viking Insurance Company v. Coleman*, No. 960278 (Utah Court of Appeals, 1996).
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BRIEF

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DOCKET NO. 960278-CA

IN THE UTAH COURT OF APPEALS

VIKING INSURANCE COMPANY OF
WISCONSIN,

Plaintiff and Appellee,

vs.

ALLEN COLEMAN, RENE B.
PETERSON, TRANS COASTAL
TRUCKING, and UTAH DEPARTMENT
OF TRANSPORTATION,

Defendants and Appellants.

Case No. 960278-CA

Priority No. 15

**REPLY BRIEF OF APPELLANTS
TRANS COASTAL TRUCKING AND ALLEN COLEMAN**

APPEAL FROM JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE HOMER F. WILKINSON, PRESIDING

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FILED

JUN 14 1996

OF APPEALS

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INTRODUCTION

Appellant and defendant, Allen Coleman (“Coleman”), found himself stranded on State Road 201 on January 7, 1994. (The citations to the record for the undisputed statement of material facts have been thoroughly cited in Appellants’ and Appellee’s briefs, thus, for the sake of brevity, Appellants will not cite them again here.) Coleman’s vehicle, insured by Appellee, Viking Insurance Company of Wisconsin (“Viking”), had stalled for the second time that day. State Road 201 is a busy, four-lane, highway with fences on both sides. After pulling his vehicle off onto the side of the road, Coleman’s only options were to either stay in the car and hope that someone would eventually stop or to exit the vehicle and attempt to contact someone, who would assist him in moving the vehicle. Coleman made the rather foreseeable decision to exit the vehicle and try to obtain help. Because the highway is fenced and the nearest telephone was across the street by a service station, he crossed both lanes of traffic, climbed the fence and attempted to obtain parts to repair his car. It is clear from a reasoned review of the undisputed material facts that the only reason that Coleman was a pedestrian on State Road 201 and involved in an accident is due to the fact that his vehicle became inoperable. Thus, the accident at issue is clearly and causally related to the ownership, maintenance and use of his vehicle.

Viking’s brief seeks to isolate one moment in time, the moment that Coleman trips in the road on the way back to his vehicle, and wants this Court to ignore every other circumstance surrounding the accident. Indeed, Viking asks this Court to overlook the very

reason Coleman was a pedestrian on the road that day, rather than driving home or working at his new job. The position that Viking urges this Court to take does not advance the purpose of auto insurance, fails to give meaning to the broad terms of the policy issued by Viking and ignores pertinent case law from other jurisdictions.

Throughout Viking's brief, Viking attempts to make distinctions between the cases cited by Appellants, Trans Coastal Trucking ("Trans Coastal") and Coleman. The distinctions pointed to by Viking are illusory. Thus, this Court should overturn the lower court's entry of summary judgment in Viking's favor and find that Viking's policy covers the damages at issue, as a matter of law.

ARGUMENT

I. THE VIKING INSURANCE CONTRACT SHOULD BE CONSTRUED SO AS TO PROVIDE THE BROADEST COVERAGE POSSIBLE.

Viking, in its brief, tries to turn this Court's attention away from the well reasoned rules of construction long applied to insurance policies in this state, by arguing that, because there is a statute which mandates the general language used in the policy, that some other standard of interpretation should be applied to the terms of the policy. Clearly, such arguments are without merit and the legislature's decision to mandate the use of the broad terms contained in the Viking policy only serve to support Appellants' position in this matter.

The Utah Supreme Court has declared, in no uncertain terms, that provisions in insurance policies should be strictly construed against the insurer. Moreover, the insurance

contract issued in this case should be construed so as to provide the broadest protection reasonably possible given the common understanding of the terms used in the Viking policy. See, *U.S. Fidelity & Guar. Co. v. Sandt*, 854 P.2d 519, 522 (Utah 1993); *P. E. Ashton Co. v. Joyner*, 406 P.2d 306, 308 (Utah 1965).

The Viking policy expressly provides coverage for bodily injury and property damage that “arises out of the ownership, maintenance or use of a car.” Given the well recognized principles of insurance policy construction in this state, which are more fully discussed in Appellants’ original memorandum, the Viking insurance policy must be construed to provide coverage for the accident in question. Clearly, the only reason that Coleman was on the highway and involved in an accident that day was because he was attempting to repair his stalled vehicle on the side of the road. Thus, it can only be concluded, as a matter of law, that the accident, i.e., Coleman’s fall while crossing the road to return to his vehicle to wait for the parts to be delivered, was directly and causally related to the ownership, maintenance and use of his car. Thus, the District Court’s decision granting summary judgment to Viking, must be overturned and judgment should be granted in Appellants Coleman’s and Trans Coastal’s favor.

II. THERE IS A CLEAR CAUSAL CONNECTION BETWEEN THE ACCIDENT AND THE USE AND MAINTENANCE OF COLEMAN’S CAR.

Viking cites a number of cases urging this Court to uphold the District Court’s decision. However, the cases that Viking cites this Court to are clearly not applicable in that they involve facts which are clearly not at issue here. In *Allied Mut. Ins. Co. v. Patrick*, 819

P.2d 1233 (Kan. 1991), *State Farm Auto Ins. Co. v. Nol*, 699 S.W.2d 156 (Tenn. 1993), and *Hawkeye-Security Ins. Co. v. Gilbert*, 866 P.2d 976 (Idaho Ct. App. 1994) cases, all the accidents involved intentional acts not directly related, in any way, to the maintenance or use of the vehicle. Indeed, the *Patrick* case involved an intentional sexual assault in a vehicle. The *Nol* case involved the intentional shooting of patrolmen in their vehicle. Furthermore, in *Hawkeye*, the driver actually exited the vehicle, not because it broke down, not because it needed to be repaired or maintained, but for the express and intentional purpose of stopping and/or assaulting a bicyclist in question. See, *Hawkeye-Security Ins. Co. v. Gilbert*, 866 P.2d 976 (Idaho Ct. App. 1994).

Similarly, the *Government Employees Ins. Co. v. Batchelder*, 421 So.2d 59, 61 (Fla. App. D1 1982), case involved the insured driving a truck to a football game and noticing bottles rolling out from underneath the seat containing beer. Before arriving at the game, the boys were stopped by a police officer for a traffic violation. As the truck came to a stop, the bottles again rolled out, but when the plaintiff attempted to secure them, one of the bottles exploded, causing injury to the insured's eye. *Id.* at 61. Clearly, in this case, the storage of beer is not causally connected nor is it supposed to be legally connected to the use or maintenance of a motor vehicle.

Likewise, in *Chamblee v. State Farm Mut. Auto. Ins. Co.*, 601 So.2d 922 (Ala. 1992), the insureds in question had exited the vehicle because they had arrived at their destination, where they were going to attend a sporting event. They were not attempting to get

back to the car, maintain the car, or use the car. Rather, at the time of the pedestrian/auto accident, they were merely trying to cross the street so that they could attend their sports activity.

Finally, in *Stucky v. Long*, 783 P.2d 500 (Okla. 1989), the insured was maintaining an action for injuries sustained after the passengers of the vehicle had left the vehicle, and one of the passengers attempted to assault the other. Obviously, the assault activity cannot be said to be, in any way, related to the ownership, maintenance or use of that particular vehicle. Thus, this particular decision is likewise irrelevant.

Unlike the case at bar, none of the foregoing cases involved the breakdown of a vehicle and the negligent action of its driver in attempting to obtain parts to repair, maintain and operate the vehicle. The cases cited by Appellants in their original brief are much more similar to the facts presented to the Court here.¹

Moreover, the hypothetical situations proposed by Viking are likewise not analogous. In their hypothetical situations, the accident and injury occur physically far removed from the vehicle and the individuals injured are likewise physically removed in time and space from the vehicle and its use or repair. On the other hand, in this case, we have an individual,

¹ *Great American Ins. Co. v. Cassell*, 239 Va. 421, 389 S.E.2d 476 (1990); *Oberkramer v. Reliance Ins. Co.*, 650 S.W.2d 300 (Mo. App. 1983); *Kohl v. Union Ins. Co.*, 731 P.2d 134 (Colo. 1986); *Trinity Universal Ins. Co. v. Hall*, 690 P.2d 227 (Colo. 1984); *Nationwide Mut. Ins. Co. v. Davis*, 455 S.E.2d 892 (N.C. Ct. App. 1995); *Eichelberger v. Rice*, 290 Pa. Super. 269, 434 A.2d 747 (1981); *McMichael v. Aetna Ins. Co.*, 878 P.2d 61 (Colo. Ct. App. 1994); *Morris v. American Liab. & Surety Co.*, 322 Pa. 91, 185 A. 201 (1936); *Chase v. Dunbear*, 185 So.2d 563 (La. Ct. App. 1966); *State Farm Mut. Auto. Ins. Co. v. Pan American Ins. Co.*, 437 S.W.2d 542 (Tex. 1969).

whose car has stalled, who has attempted to repair it, but whose only alternative, because he had no car phone, is to contact someone for help in an attempt to move his stalled vehicle. Coleman admitted in his deposition that the only reason he was on the road at the time of his fall was for the express purpose of obtaining repair parts to make his vehicle operable. There was no intervening, independent act of significance that severed the causal connection between Coleman's intent to obtain help and repair for his vehicle and the accident in question. Accordingly, his activities directly arose out of and were causally connected to the maintenance and use of his vehicle at the time of the accident.

**III. THERE ARE NO MEANINGFUL DISTINCTIONS BETWEEN
THE CASE HERE AND THE DECISIONS IN *EICHELBERGER* AND *DAVIS*.**

Viking attempts to find meaningless distinctions between the facts in *Eichelberger v. Rice*, 290 Pa. Super. 269, 434 A.2d 747 (1981) and *Nationwide Mut. Ins. Co. v. Davis*, 455 S.E.2d 892 (N.C. Ct. App. 1995) and the facts presented here. However, a close review of the factual scenario in both cases demonstrate that they are both similar in nature to this case and their holdings are applicable to the accident here. In *Eichelberger*, the insured, who caused the accident, was not involved in putting gas in the vehicle, rather she was standing to the front of and away from both vehicles, while another individual was putting gas in her gas tank. Most important to this case, she was on the highway that day only because her vehicle had become inoperable and she was attempting to get help to repair it. Clearly, this is the same situation as is presented in this case.

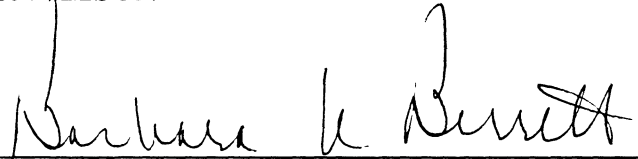
Finally, the distinctions that Viking seeks to make, with regard to the facts in *Davis* and facts presented here, are even less persuasive. In *Davis*, the insured's granddaughter was injured after she had sat in the vehicle for some time after her grandmother walked toward the store. The child then decided that she wanted to enter the grocery store with her grandmother, so that she could get ice cream. Such actions are not clearly related to the use or maintenance of the vehicle, but in the *Davis* case, the court found the exit and parking of the vehicle sufficiently closely related to the use of the vehicle, so as to trigger coverage. It is apparent that the causal connection between Coleman's accident and the maintenance and use of his vehicle is much more direct, than was the connection in *Davis*. Accordingly, the court's decision below should be reversed and judgment in Trans Coastal's and Coleman's favor should be entered.

CONCLUSION

The only reason that Coleman was on the road as a pedestrian was directly due to the fact that his vehicle, insured by Viking, broke down and he was attempting to obtain parts for its repair. The terms of the Viking insurance contract are such that the language should be given its broadest interpretation. Thus, it can be said, as a matter of law, that Coleman's accident arose out of the ownership, maintenance and use of his vehicle. Accordingly, there is coverage under the Viking policy and this Court should enter judgment in favor of Trans Coastal and Coleman.

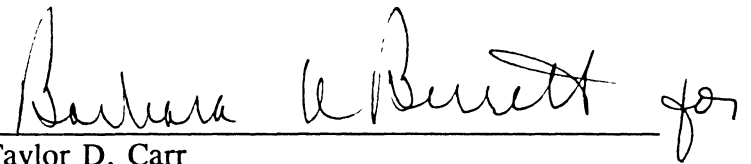
DATED this 14th day of June, 1996.

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A handwritten signature in cursive script, appearing to read "Barbara K. Berrett", written over a horizontal line.

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DATED this 14th day of June, 1996.

A handwritten signature in cursive script, appearing to read "Barbara K. Berrett", followed by the word "for" in a smaller, less formal script, written over a horizontal line.

Taylor D. Carr
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CERTIFICATE OF SERVICE

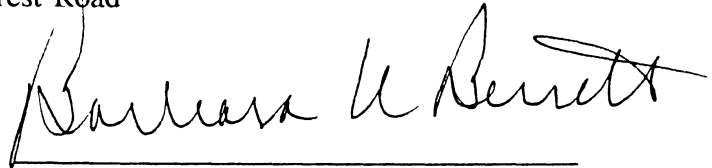
I, BARBARA K. BERRETT, (attorney for defendants/appellants) hereby certify that on June 14th, 1996, I mailed a copy of the foregoing REPLY BRIEF OF APPELLANTS TRANS COASTAL TRUCKING AND ALLEN COLEMAN by United States mail to the following:

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