

1976

Melvin L. Matlock v. Government Employees Insurance Company: Petition for Rehearing

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and
Respondent,

vs.

JOHN L. HANSEN,

Defendant and
Appellant.

Case No. 14107

PETITION FOR
WRIT OF HABEAS CORPUS
AND BRIEF

L. L. SUMMERHAYS OF
STRONG & HANNI
604 Boston Building
Salt Lake City, Utah 84111

Attorneys for Defendant and Appellant

FILED

MAR 17 1976

IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN L. MATLOCK,

Plaintiff and
Respondent,

VS.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY,

Defendant and
Appellant.

Case No. 14107

COMES NOW the Defendant and Appellant, Government Employees Insurance Company, and petitions the Court for a Rehearing of the above-entitled matter.

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ARGUMENT

POINT I. THE COURT ERRONEOUSLY HELD THAT BECAUSE GEICO KNEW THE INSURED HAD SOME OF HIS VEHICLES INSURED WITH ANOTHER COMPANY PRIOR TO THE TIME OF THE ACQUISITION OF THE 1951 CHEVROLET 1 1/2 TON TRUCK AND WITH THIS KNOWLEDGE CONTINUED TO RECEIVE THE POLICY PREMIUMS, IT HAD A DUTY TO WARN THE INSURED THAT THE PROVISION IN THE POLICY PERTAINING TO 30 DAY AUTOMATIC COVERAGE WOULD BE USED TO DEFEAT A CLAIM WHICH MIGHT BE MADE UNDER THE POLICY AND NOT HAVING DONE SO WAIVED THE PROVISION.

The policy provided that all vehicles owned by the insured must be insured with Geico in order for the 30 day automatic coverage provision to apply. There is no dispute that three of the insureds vehicles were insured with another company. Assume that Geico was aware of this fact because it was in their file material. In all fairness we would have to assume that the insured was aware of the fact that the policy provided automatic coverage only if all vehicles were insured with Geico. In addition to the provision in the policy, plaintiff's Exhibit "C", Policy Change Request Form, which the insured had in his possession provided in bold letters the following:

USE THIS
FORM TO
REPORT

POLICY CHANGE REQUEST FORM

Please keep this form with your policy and use it next time you wish to report and/or request any of the following changes:

CHANGE OF AUTO

..... Complete and return page 2 only.

AN ADDITIONAL AUTO

..... Complete and return page 3 only.

IMPORTANT

YOUR POLICY PROVIDES AUTOMATIC INSURANCE FOR A NEWLY ACQUIRED AUTOMOBILE, whether it replaces one described in your policy or is an additional car, provided we insure all automobiles owned by you as of the delivery date of an additional auto and GEICO[®] IS NOTIFIED WITHIN 30 DAYS OF DELIVERY.

Does the company have an additional duty to repeat to the insured the facts that have already been made plain to him? It shouldn't have.

While insurance companies are allowed to give rate inducements to policyholders who cover more than one car with the company, it would appear to be a restraint of trade to require an insured to insure all of his cars with the same company or none at all or to cancel out an insured who insured some of his cars with another company. The insuring of all cars with the same company is a condition precedent to an insured having the benefit of the 30 day automatic insurance clause but this is based upon practical reasons pertaining to amounts and kinds of coverage.

The alternative is that the insurance does not become effective till the company receives and accepts the application for insurance.

In order for the company to waive this provision there would have to have been a duty upon the company to take some additional action toward the insured. The opinion says the insurance company waived the provision by not warning the insured it would reject a claim which might be made under the policy.

The company has warned the insured of the fact that unless his vehicles are all insured by Geico the 30 day automatic coverage will not apply.

The Court has not indicated in the opinion what type of objection would be required and no case was cited by plaintiff's counsel and none by the

Court to support a finding that such a duty existed.

The case of Boling v. State Farm Mutual Insurance Co., 466 S.W. 2d, 696 (Mo., 1971) cited by the Court is not in point and does not support the Court's decision. In that case there was a dispute as to whether a 1966 Buick which was titled in the name of Hunt Materials, a corporation, which paid for the car, or Paul Hunt was the insured. Paul Hunt was president and general manager of Hunt Materials, Inc., and used the car in connection with his business and individually. The policy application was made out by State Farm Mutual's agent and he filled in the application: "Hunt, Paul, d.b.a. Hunt Materials, Inc."

There was, thus an ambiguity in the name of the insured and the Court held that the corporation which was the owner of the car was the insured, construing the policy against the company.

This case actually supports the position of Geico. The vehicle was registered in Matlock's name and M & M Orchards is not and was not a corporation. There was no question of waiver in this case and no question of the 30 day automatic coverage clause. The case does not support plaintiff's position.

The Court seems to place some importance upon the fact that the company knew that the insured had some of his automobiles insured with another

STATE OF COLORADO CERTIFICATE OF TITLE TO A MOTOR VEHICLE

VIN: 1G1 6857		FIRST LIEN FILE NO.		FILE NO. E 62807	
PLATE: 1076045		YEAR: 1971		BODY STYLE: Steps	
MAKE: Chevrolet		OWNER NAME AND ADDRESS			
MODEL: 1300		Melvin L. Matlock			
LAST PURCHASE: 1/5/73		P.O. Box 6			
DATE FIRST: 6/5/52		Delta, Colorado			
CAPACITY: 91418		91418			
SELLER: North Canyon Canning Co., Delta, Utah		COUNTY: Delta			
DATE APPLIED: 1/6/73		FILE NO. 132115			
DATE FILED:		FIRST LIEN OF RECORD FILED TO			
COUNTY: DELTA		NONE			
AMT. OF		SECOND LIEN OF RECORD FILED TO			
DATE FILED:					
CO.		AMT. OF LIEN			
FILE NO.					

I, the undersigned Executive Director of Revenue of the State of Colorado, certify that the applicant named herein has been duly registered in this office as owner of the motor vehicle herein described pursuant to the laws of the State of Colorado, subject to liens and encumbrances, if any, herein set forth.

In witness whereof, I have hereunto affixed my signature and official seal at Denver.

FIRST LIEN
EXTENDED TO _____

BY _____

SECOND LIEN
EXTENDED TO _____

BY _____

DEPARTMENT OF REVENUE
MOTOR VEHICLE DIVISION

Any Alteration or Erasure Will Automatically Void This Title.

company. This does not have any significance unless there is some evidence that the insurance company, with that knowledge, nevertheless extended on prior occasions, the automatic coverage to the insured inspite of the fact that he did not qualify for it. There is no proof whatever that this had occurred.

In connection with the vehicles acquired for use on the farm, the 1951 Chevrolet was the only "additional" vehicle sought to be insured as an additional vehicle.

The first vehicle used on the farm was a 1963 Chevrolet 3/4 ton pickup truck insured by Geico in August of 1963, but placed on the farm sometime after May of 1964. (R 119). At this time, he also had one or more passenger vehicles insured with Geico. (R 124 L 10) on the same policy.(R 134 L 9)

The next vehicle he insured with Geico for farm use was a 1971 Ford 3/4 ton pickup truck which replaced the 1963 Chevrolet. (Defendant's Exhibit "4".) This was not an additional vehicle within the terms of the policy, but was qualified as an owned automobile because it replaced an automobile covered under the policy and it was covered under the terms of the policy as a replacement vehicle by application. See Defendant's Exhibit "4."

MELVIN L. MATLOCK, M. D.
3415 HARRISON BLVD.
OGDEN, UTAH 84403

October 1, 1970

Government Employees Insurance Co.

Washington, D.C. 20036

DEF-EXHIBIT 4

DATE 3-12-75

CASE

Dear Sir:

Reference Policy # 506-14-76-1

mining 1963 Chevrolet Truck, kept on my

in - address P.O. Box 119

Delta, Colorado 81416

This truck has been traded on a new

1/ Ford Pickup F-250-360 V-8

ser. no. F25 YKK 03105

854

truck list price \$2,771⁰⁰ - Truck is paid for,

owner of truck is Mr. James Horton age 50

Mrs. James Horton age 51

& myself - age - 47.

I want the same Cancellation as on the 1963 Chevrolet

truck.

Sincerely yours,

Melvin L. Matlock

The next vehicle acquired by the insured for use on the farm was the 1951 Chevrolet 1 1/2 ton truck in issue in this case. It was acquired on January 5, 1973. This was an additional vehicle and the only additional vehicle under the terms of the policy acquired for use on the farm.

However, during this same period of time, the insured had a 1967 Pontiac insured with Geico under the same policy. (Defendant's Exhibit "7") He had a 1963 Corvette insured with Geico under this policy that was involved in a 1965 accident in Ogden. (R 128, L 14).

On August 21, 1972, the insured requested insurance from Geico on a 1972 Chevrolet 3/4 ton pickup on which he had a camper, the same being kept in Pocatello, Idaho. Coverage was to be and was covered by Geico under the same policy, (Defendant's Exhibit "D-1") Neither the company or the insured treated the policy as an exclusive farm policy. It was in fact a family automobile policy. Farm and passenger cars were insured on the same policy.

The only vehicle insured with Geico by Dr. Matlock which did not qualify as a passenger, farm or utility type vehicle at any time, was the 1951 1 1/2 ton truck and Geico did not give it automatic coverage because Dr. Matlock was not entitled to it under the terms of the policy.

On what facts then did the trial Court base its findings that the company waived this provision. The statement of the trial Court that it finds the company waived this provision is not supported by any factual evidence and should not be accepted by the appellate Court because the record does not support it. All vehicles of Matlock insured by Geico were insured by the same Geico policy. What specific conduct of the company waived the policy terms?

As Justice Ellett has stated in his dissent, it is impractical and unfair to the insurance company to put a burden of giving additional notice to the insured that he will fail to qualify for the automatic 30 day coverage clause because he has insured some of his vehicles with another company. He had his policy and his policy change request form, both of which advised him of that fact. Why do we excuse Dr. Matlock from this knowledge. He, in fact, is the one who waived the right to the 30 day automatic coverage provision, not the company. He has the burden of bringing himself within the terms of the policy.

The Court should reverse itself on this finding and holding.

POINT II. THE COURT ERRONEOUSLY RULED THAT THE WEIGHT PROVISION OF 1500 LBS PERTAINING TO FARM VEHICLES WAS ONLY A GUIDE LINE WHICH WAS NOT ENFORCED IN THE PAST AND WAS THEREFORE WAIVED.

With respect to Point II above, the trial Court found and the Supreme Court in its opinion has affirmed the trial Court's finding that the weight provision contained in the policy was only a guide line which the defendant had not enforced in the past. However, the record clearly shows that prior to the time the 1951 Chevrolet 1 1/2 ton truck was insured, the only vehicles for which the insured had applied for coverage were passenger cars or 3/4 ton pickup trucks. Dr. Matlock testified as follows:

Q. You have not prior to the time that you sent notice of the 1 1/2 ton 1951 Chevrolet truck insured any vehicle with Geico other than the 1/2 ton or 3/4 ton pickup in the truck variety have you?

MELVIN L. MATLOCK, M. D.
1541 EAST CLARK
POCATELLO, IDAHO 83201
TELEPHONE 232-7760

August 21, 1972

Western Employers Ins. Co.
2 Western Avenue
Washington, D.C. 20015

DEF EXHIBIT 1
DATE 3-12-75
CASE

Sir:

Will you please quote me insurance rate on
vehicle which is described in the attached application.
The household ins. with your Company and
a Ford 3/4 ton pick-up truck which is kept
on a farm in Colorado insured policy # 506-14-761.

The other vehicle is in Colorado and the policy
on the truck. Will you please advise me
coverage it has.

Will advise that I desire at least 300,000⁰⁰
injury liability, I need that amount on both
vehicles as I will have a blanket policy to pick
up that amount.

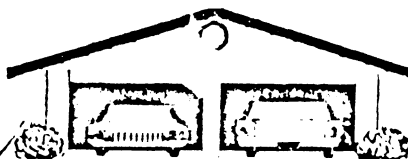
The 1972 Chevy 3/4 ton truck has mounted on it
9 ft. Security Trailer Camper - Cost new July
1972 - \$2,300⁰⁰
Please quote me a rate for this new truck with camper.

FORM FOR REPORTING —

ADDITIONAL AUTOMOBILEUSE THIS PAGE TO REPORT AN ADDITIONAL AUTO ———

If the newly acquired auto replaces an auto already insured on your GEICO policy ———

Complete — Detach — Return page 2 instead of this page.



To be sure of the lowest possible rates, please answer all questions.

I. IDENTIFICATION

Insured's Name MELVIN L. MATLOCK Policy No. 506-14-76-1
 Residence Address (No. & St.) 2263 S. FAIRWAY DR City & State POCATELLO, IDAHO # 83201
 Mailing Address (if different than above) 1541 E. CLARK City & State POCATELLO, IDAHO # 83201
 Telephone Number (Residence) 237-1990 (Business) 232-7160
 Check here if the above addresses are new and have not already been reported. ☒ Residence Address ☒ Mailing Address

Describe in detail the newly acquired automobile, including make, model, year, color, and identification number.

Year	Make - Trade Name	No. Cyl.	Model (Impala, F-85, etc.)	Body Style (4-Door, Hard Top, Sta. Wgn., etc.)	Cost
1972	CHEVROLET	8	3/4 TON PICK-UP TRUCK	FLATBED	4100.00
Serial or Identification Number Recorded on Registration Card			Purchase Date	State in Which Auto Will Be Registered	
CCE 2425-131,064			mo 13 day 1 yr 72 New <input type="checkbox"/> Used <input type="checkbox"/>	IDAHO	
Name and Address of person or dealer from whom car was purchased:			1965 AND LATER MODEL AUTOMOBILES: Give exact horsepower if over 300.		
TAYLOR CHEVROLET BULK INC. FULTON, KENTUCKY 42041			IF A COMPACT AUTOMOBILE: <input type="checkbox"/> Check if horsepower is over 130; or 125 (in Colo., N.J. and Va.)		

Are you the sole registered owner of car (excluding finance company)? If "No," show ownership below:
 Name of registered ☒ Owner MELVIN L. MATLOCK Relation to you Owner
☐ Co-owner
 If Auto is registered in New York, give registered owner's Social Security Number 11-02 3-30-72

II. FINANCED AUTO

If your policy includes, or if you are requesting Comprehensive and Collision Coverages, and the car is financed, please insert below the name and address of the finance company or bank so that we may send them the necessary evidence of insurance.

NAME OF FINANCE COMPANY OR BANK

NO. & ST.

CITY & STATE

ZIP #

Note: Most banks and finance companies require that you carry both Comprehensive and Collision coverages when a car is financed.

III. COVERAGES

Indicate by checkmark the coverages that you wish to have on your newly acquired car. The additional insurance will be added to the present policy pro rata so that all coverages will be contained in a single policy and will have the same expiration date. (Coverages are subject to your approval after the premium amount is determined.)

SAME COVERAGE AS CARRIED ON ☐ CAR 1 ☐ CAR 2 ☐ CAR 3, OR;Bodily Injury Liability ☐ \$10,000 and \$20,000 ☐ \$15,000 and \$30,000 ☐ \$20,000 and \$40,000 ☐ \$25,000 and \$50,000☐ \$50,000 and \$100,000Property Damage ☐ \$5,000 Each Accident ☐ \$10,000 Each Accident ☒ \$25,000 Each AccidentAutomobile Medical ☐ \$1,000 Each Person ☐ \$2,000 Each Person ☐ \$3,000 Each Person ☒ \$5,000 Each PersonUninsured Motorists ☒ (Note: Not available in Canal Zone, Guam, Newfoundland or Puerto Rico.)Comprehensive, Fire, Theft ☒ Non-Deductible ☐ \$50 DeductibleCollision ☐ \$25 Deductible ☐ \$50 Deductible ☒ \$100 DeductibleTowing & Labor Costs ☒ \$25 Per Disablement**IV. CLASSIFICATION.** Complete this section as it applies to ALL Drivers (except self) of ALL GEICO insured autos.

Names of Drivers other than the Insured who operate your cars	Date of Birth	Male or Female	Relation to You	Occupation* (If student, show grade)	Reside with You? Yes—No	Married or Single	Years Driving Experience	Percentage of Use by Each Driver for Each Car			Driver Training Yes—No
JOYCE MATLOCK	10-14-38	F.	WIFE	NONE	YES	M	18		50		NO

*If student is away at school, indicate distance of school from your homemi. (If more than one student, give information on separate sheet.)

If auto driven to and from school: Who drives? Miles one way?
 How often?

Do you drive to and from work (including part way to bus or train depot, or fringe parking area)?	CAR 1		CAR 2		CAR 3	
	YR.	MAKE	YR.	MAKE	YR.	MAKE
(a) Days per week auto is driven to work, and	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	
(b) One way driving distance to work.	5 DaysMi.		5 Days 3 Mi.	DaysMi.	
Is auto used in business other than driving to and from work?	<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	
Location of auto (City and State)	POCATELLO, IDAHO					

(Note: For additional auto, give description and use on a separate sheet.)

A. I have not insured any other truck prior to that time.

Q. That is any other truck over the 1/2 ton or 3/4 ton?

A. That is true.

Q. No one from Geico ever checked your vehicle to determine what their capacity or rating was, did they?

A. Not to my knowledge.

(R. 142, L 25 - 143.)

The first vehicle used on the farm was a 1963 3/4 ton Chevrolet pickup truck and the next one was a 3/4 Ton Ford pickup truck. (Defendant's Exhibit "1") On what facts did the trial Court make its finding that the company waived this provision. The only vehicle which did not qualify weight wise was the 1 1/2 ton Chevrolet 1951 truck and the company did not afford this vehicle automatic coverage but placed the insurance on the vehicle the first day it could have received the application, to-wit: April 8th. This certainly did not constitute a waiver. There is no evidence whatever to support the finding that this provision was not enforced by the company.

The Court's finding should be reversed.

POINT III. THE COURT ERRONEOUSLY FOUND THAT THE COMPANY WAIVED ANY DEFENSES IT HAD BECAUSE IT INVESTIGATED THE CLAIM AND ITS AGENTS LED THE INSURED TO BELIEVE THAT PAYMENT WOULD BE MADE AND FURTHER THAT A CORRECTED POLICY WAS ISSUED COVERING THE VEHICLE AT THE TIME OF LOSS.

In his request for coverage on the 1951 Chevrolet 1 1/2 ton truck, the insured requested the same coverage as on the 1971 Ford truck. That vehicle had

coverage for liability and \$5,000 medical pay. The same coverage was placed on the 1951 1 1/2 ton truck by the company as of the 8th of April, 1974. See plaintiff's Exhibit "B".

After the accident occurred the insured made application to Geico for the medical pay benefits under the policy. See Exhibit "O", a letter dated July 9, 1973, from which I quote beginning on the bottom of page 2:

There is a claim for medical payments being processed at this time for payments in behalf of Mr. Jim Horton of the above address who was injured in the accident of April 7th.
Signed Melvin L. Matlock.

When the company refused to make payment of the medical bills and denied coverage by letter dated May 6, 1975, Dr. Matlock then filed this declaratory judgment action. Suit was commenced with service of summons on the Insurance Commissioner on June 19th, 1974. The suit involving liability coverage was served on Dr. Matlock on September 4, 1974 and the defense tendered to Geico on September 5, 1974, which was refused on the basis there was no coverage. There is no evidence that any one knew about the liability claim prior to the time that that suit was filed.

The Court has indicated in its opinion that agents of the defendant led the plaintiff to believe that payment of the claim against the policy would be made. The only claim that was being made was a claim for medical payments. The bills incurred on behalf of Horton were covered for the most part by a Blue Cross Blue Shield policy with some balance being paid by Dr. Matlock. There were no representations made by the company or any agent which induced either Mr. Horton or Dr. Matlock to incur any medical bills that would not otherwise have been



GOVERNMENT EMPLOYEES INSURANCE COMPANY

A CAPITAL STOCK COMPANY NOT AFFILIATED WITH THE U. S. GOVERNMENT • WASHINGTON, D. C.

1705 L STREET, N. W., WASHINGTON, D. C. 20036

GENERAL CHANGE ENDORSEMENT FAMILY AUTOMOBILE POLICY DECLARATIONS

03-14-76-1 ✓	ENDORSEMENT ISSUE DATE ✓ 06-08-73 (12:01 A.M., STANDARD TIME)	ENDORSEMENT EFFECTIVE DATE ✓ 04-08-73 (12:01 A.M., STANDARD TIME)	ITEM 2. ✓ POLICY PERIOD (MONTH, DAY, YEAR) FROM 03-30-73 TO 03-30-74 12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED AS STATED HEREIN.
--------------	---	---	---

02 ITEM 1.
NAMED MELVIN L MATLOCK
INSURED M & M ORCHARDS
AND PO BOX 6
ADDRESS DELTA CO 81416

THIS ENDORSEMENT REFLECTS THE CURRENT STATUS AND FORMS A PART OF THE POLICY AS NUMBERED HEREIN ISSUED BY THE GOVERNMENT EMPLOYEES INSURANCE COMPANY TO THE INSURED NAMED IN ITEM 1 AND IS EFFECTIVE AS OF 12:01 A.M., STANDARD TIME ON THE DATE INDICATED.

ITEM 1a. THE OWNED AUTOMOBILE WILL BE PRINCIPALLY GARAGED IN THE TOWN AND STATE DESIGNATED IN ITEM 1, UNLESS OTHERWISE STATED HEREIN.

4 OF OWNED AUTOMOBILE(S) OR TRAILER(S)

TRADE NAME	IDENTIFICATION NO.	MODEL, BODY STYLE	CYL.	DATE PURCHASED	CLASS	SYMBOL
FORD/PU	F25YKK03105				FR-	3C
CHEV/CAMP	CCE242S131064				NR-	72
CHEV	JEAL070045				LR-	

COVERAGE AFFORDED IS ONLY WITH RESPECT TO SUCH OF THE FOLLOWING COVERAGES AS ARE INDICATED BY LIMITS OF LIABILITY INSERTED HEREIN. THE LIMIT OF ANY'S LIABILITY AGAINST EACH SUCH COVERAGE SHALL BE AS STATED HEREIN, SUBJECT TO ALL THE TERMS OF THIS POLICY HAVING REFERENCE THERETO.

UNIT 1.			UNIT 2.		UNIT 3. ✓		COVERAGES
LIMITS OF LIABILITY			LIMITS OF LIABILITY		LIMITS OF LIABILITY		
SON	EACH OCCURRENCE		EACH PERSON	EACH OCCURRENCE	EACH PERSON	EACH OCCURRENCE	A- BODILY INJURY LIABILITY
00-000	\$ 300,000		\$ 100,000	\$ 300,000	\$ 100,000	\$ 300,000	
CURRENT			EACH OCCURRENCE		EACH OCCURRENCE		B- PROPERTY DAMAGE LIABILITY
0,000			\$ 25,000		\$ 10,000		
ISON			EACH PERSON		EACH PERSON		C- MEDICAL PAYMENTS
000			\$ 5,000		\$ 5,000		
SON	EACH ACCIDENT		EACH PERSON	EACH ACCIDENT	EACH PERSON	EACH ACCIDENT	J- UNINSURED MOTORISTS
	\$		\$	\$	\$	\$	
	\$			\$		\$	(1) BODILY INJURY
							(2) PROPERTY DAMAGE
CTUAL CASH VALUE, OR STATED AMOUNT	(2) \$100		(1) <input checked="" type="checkbox"/> ACTUAL CASH VALUE, OR STATED AMOUNT	(2) \$100	(1) <input type="checkbox"/> ACTUAL CASH VALUE, OR STATED AMOUNT	(2) \$100	H- (1) COMPREHENSIVE, FIRE & THEFT (EXCLUDING COLLISION) (2) PERSONAL EFFECTS
ASH VALUE, OR STATED AMOUNT			ACTUAL CASH VALUE, OR STATED AMOUNT		ACTUAL CASH VALUE, OR STATED AMOUNT		
			\$		\$		D- (1) FIRE, LIGHTNING AND TRANSPORTATION (2) THEFT (3) COMBINED ADDITIONAL
ASH VALUE, LESS DEDUCTIBLE			ACTUAL CASH VALUE, LESS DEDUCTIBLE		ACTUAL CASH VALUE, LESS DEDUCTIBLE		
\$25 PER DISABLEMENT			\$ 100 DEDUCTIBLE		\$ DEDUCTIBLE		E- COLLISION
SEE ENDORSEMENTS			\$25 PER DISABLEMENT		\$25 PER DISABLEMENT		I- TOWING AND LABOR COSTS
			SEE ENDORSEMENTS		SEE ENDORSEMENTS		MISCELLANEOUS

1 A16
1 A16

FORM NUMBERS
OF ENDORSEMENTS
ATTACHED TO POLICY

LOSS UNDER PART III IS PAYABLE AS INTEREST MAY ACCRUE TO THE NAMED INSURED AND THE LIENHOLDER HEREIN.

LOSS PAYABLE CLAUSE STATED ON THE REVERSE OF THIS POLICY APPLIES IN FAVOR OF THE NAMED LIENHOLDER IF THE POLICY IS OTHERWISE ENDORSED.

Plaintiff's Exhibit B

CASE # _____

DATE 3-12-75

RECEIVED _____

incurred no matter what the alleged representations may have been on the part of Geico, and if there was a representation, it did not influence the amount of the medical bills which were incurred. Dr. Matlock did not rely upon the insurance company for payment of the medical bills and did not at any time change his position to his prejudice by virtue of any reliance. (R. 132.) None of the alleged conduct on the part of the insurer was outside the scope of that set forth in Section 31-19-34 Utah Code Annotated 1953 which states as follows:

None of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of the policy or of any defense of the insurer thereunder; (1) acknowledgment of the receipt of notice of loss or of claim under the policy; (2) furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss or receiving or acknowledging receipt of any such form of proof filled out; (3) investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

(The appellant refers the Court to pages 25 through 27 and pages 31 and 32 of its appellate brief with respect to waiver and the authority of an independent claims agent to waive any rights that the company had. There was no showing at any time that any adjuster or agent had authority to waive any policy provisions. The burden of proof was upon the insured to prove such authority and proof was not submitted.)

There was never any claim that the company or any agent represented that a defense would be offered on behalf of Matlock in connection with any suit being contemplated by Horton and when the defense of the action was tendered to the company it was promptly rejected.

The Court has stated that on October 29, 1973, defendant issued a corrected policy contract which recited that it was effective March 30, 1973 through March 30, 1974. This policy ran at all times from sometime in the 1950's,

when first purchased; March 30th, one year to March 30th, the following year. In determining whether or not the corrected policy afforded coverage on the 1951 Chevrolet 1 1/2 ton truck it is necessary to take some other documents and matters into consideration. The initial endorsement establishing coverage set the coverage on April 8, 1973. If the automatic coverage provision had been in effect for the insured, the earliest date of coverage, based on the Court's decision, would have been April 6, 1973, when the vehicle was put in operation. There is no way that the insurance would have extended back to March 30, 1973. The company could not charge a premium back to March 30, 1973. The insured certainly would not have stood for such a charge.

In plaintiff's Exhibit "V", dated September 24, 1973, which is a Geico gram addressed to Melvin L. Matlock pertaining to Policy No. 506-14-76-1, the company stated:

We are reinstating your policy effective July 11, 1973 without a lapse in coverage. Effective October 25, 1972, we are deleting the 1972 Chevrolet camper and truck. Effective May 10, 1973, we are deleting the 1951 Chevrolet pickup from your policy. We apologize for the confusion corrected policy papers will follow.

In Appleman on Insurance Law and Practice, Vol. IIIA, Chapter 103 Reinstatement of Policies, §1791, p.397, reinstatement is defined as follows:

"Reinstate" as used in reinstatement clause of a life policy is entitled to be given its ordinary meaning which is to restore to a former position. Schiell vs. New York Life Insurance Company, (Ariz., 1950), 178 F.2d 721.

The overwhelming majority of Courts hold that the old contract is reinstated and received and the new policy is merely a continuation of the old.

In the corrected policy contract referred to by the Court, they have shown date issued as 10/29/73 and the policy period from 3/30/73 to 3/30/74 which is the same period the policy had for many years. There is nothing in the corrected policy contract to show that the insurance on the 1951 Chevrolet 1 1/2 ton truck was changed from the April 8th, date that had previously been established for coverage.

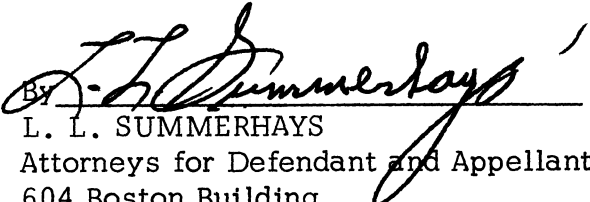
There was neither waiver by the insurance company or conduct upon its part which constituted estoppel.

CONCLUSION


The decision of this Court as it now stands puts a burden upon the insurance company that is unfair and contrary to the provisions of the policy which are standard provisions in all policies. The petition for rehearing should be granted and the decision reversed.

Respectfully submitted,

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MAILED two copies of the foregoing APPELLANT'S PETITION FOR REHEARING AND BRIEF to Richard Campbell, Attorney for Plaintiff and Respondent, 2324 Adams Avenue, Ogden, Utah, this 17 day of March, 1976.


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