

1986

LDS Hospital, a Division of Intermountain Health Care Inc., a Utah corporation v. Joel Miller, Marsha Miller, and Capitol Life Insurance Company : Brief of Respondent

Utah Supreme Court

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David W. Slagle; Attorney for Capitol Life Insurance Company; Ronald J. Yengich; Attorney for Miller; Attorneys for Defendants.

Thomas A. Duffin; Hans M. Scheffler; Attorneys for Plaintiffs/Appellants.

Recommended Citation

Brief of Respondent, *LDS Hospital v. Miller*, No. 198620990.00 (Utah Supreme Court, 1986).
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UTAH

1986 20990

IN THE SUPREME COURT OF THE STATE OF UTAH

LDS HOSPITAL, a Division of
INTERMOUNTAIN HEALTH CARE,
INC., a Utah corporation,

Plaintiff/
Appellant,

vs.

JOEL MILLER, MARSHA MILLER, and
CAPITOL LIFE INSURANCE COMPANY,

Case No. 20990

Defendants/
Respondents.

INTER-MOUNTAIN CLINIC, INC.,

Plaintiff/
Appellant,

vs.

JOEL MILLER and CAPITOL
LIFE INSURANCE COMPANY,

Defendants/
Respondents.

Appeal from the Judgment of the Third District Court
in and for Salt Lake County
Honorable Homer F. Wilkinson, Judge

DAVID W. SLAGLE
P. O. Box 3000
Salt Lake City, Utah 84110
Attorneys for
Defendant/Respondent Capitol
Life Insurance Company

THOMAS A. DUFFIN
HANS M. SCHEFFLER
311 South State, Suite 380
Salt Lake City, Utah 84111
Attorneys for Plaintiffs/Appellants

RONALD J. YENGICH
72 East 400 South #355
Salt Lake City, Utah 84111
Attorney for Defendants Miller

FILED
MAR 17 1986

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THOMAS A. DUFFIN
HANS M. SCHEFFLER
311 South State, Suite 380
Salt Lake City, Utah 84111

Attorneys for Plaintiffs/Appellants

DAVID W. SLAGLE
P. O. Box 3000
Salt Lake City, Utah 84110
Attorneys for
Defendant/Respondent Capitol
Life Insurance Company

RONALD J. YENGICH
72 East 400 South #355
Salt Lake City, Utah 84111
Attorney for Defendants Miller

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BRIEF OF RESPONDENTS

STATEMENT OF ISSUES

The sole issue presented in this appeal is whether the lower court erred in granting a Summary Judgment to Defendant, Capitol Life Insurance Company, and in denying a similar Summary Judgment to Plaintiff. Specifically, this case involves the interpretation of a clause contained in a health

and accident policy issued to defendant Marsha Miller, wife of Joel Miller.

STATEMENT OF FACTS

Respondent concurs with the stipulated Statement of Facts contained in the Brief of Appellants. (Appellants' Brief, pp. 2-4).

SUMMARY OF ARGUMENT

1. The lower court was correct in finding that the exclusion contained in the health and accident policy was applicable to the facts of this case in that the insured, Joel Miller, was injured as a causal result of conduct arising out of a felony.

2. The language contained in the health and accident policy was not ambiguous. While Appellants may concoct conflicting constructions of this clause, such concoctions are inapplicable to the present situation and are, therefore, irrelevant as to any claim of ambiguity.

ARGUMENT

POINT I

THE LOWER COURT CORRECTLY APPLIED THE PRINCIPLES OF INSURANCE INTERPRETATION IN CONCLUDING THAT THE EXCLUSION IN THIS CASE PRECLUDED THE CLAIM OF JOEL MILLER.

Respondent does not dispute the general principles of law enunciated in Appellants' Brief relating to the interpretation

of insurance contracts. (Appellants' Brief, pp. 5-11). There is no doubt that ambiguous insurance contracts are construed against the insurance company and that exceptions to the contract must be proven by the insurance company. Additional principles of insurance interpretation should also be noted. The rights of the parties rests on the insurance contract as written, and courts should not indulge in forced construction so as to cast upon the insurance company liability which it has not assumed. Kozak v. DAIIE, 262 N.W.2d 904 (Mich. App. 1977). Unambiguous policy language should be given its plain and ordinary meaning. Insurance policies should be read with the meaning which ordinary laymen would give to the words. Southland Saslor v. Homelife Ins. Co., 416 So. 2d 867 (Fla. App. 1982).

The language contained in Miller's accidental and health policy excluded coverage for the commission of certain acts which the insurance company declined to insure because of public policy reasons. These "unlawful acts" provisions are valid and enforceable. As stated by one authority:

Policies of life and accident insurance often expressly provide that no recovery shall be had thereunder in case of death or injury while engaged in, or in consequence of, a violation of law or the commission of a crime, or contain some provision covering some form of unlawful or wrongful act. Such a provision is valid and enforceable. In cases arising under policies containing a provision limiting, or relieving the insurer from liability where the insured was, at

the time of his death, committing or participating in a felony, it has frequently been held that on the basis of the evidence presented recovery on the policy was precluded as a matter of law. 43 AM. JUR. 2d §580, Insurance, p. 646.

The lower court correctly applied the principles cited both in Appellants' Brief and the additional principles cited herein and reached the conclusion that the insurance policy issued by Capitol Life Insurance Company did not cover the injuries sustained by Joel Miller. The application of these principles will now be discussed in relation to the arguments raised by Appellants.

POINT II

DEFENDANT CAPITOL LIFE INSURANCE COMPANY
SATISFIED ITS BURDEN OF PROVING THE APPLICA-
BILITY OF THE EXCLUSION CLAUSE AS WELL AS
THE CAUSAL RELATIONSHIP BETWEEN THE
INSURED'S INJURIES AND THE VIOLATION OF THE
LAW.

The policy issued to defendant Miller specifically excluded any medical coverage for injuries "arising out of an attempt at assault or felony." It is undisputed by the parties that on October 23, 1981, defendant Miller killed Robert L. Heinz by driving his automobile into Heinz on the freeway. Furthermore, it is undisputed that at the time of the accident Miller was legally intoxicated. Finally, it is undisputed that Miller pleaded guilty to a second degree felony of manslaughter for recklessly causing the death of another.

Appellants attack the conclusion that since Miller pleaded guilty to a felony the exclusion contained in the insurance policy was applicable and coverage was therefore properly denied. (Appellants' Brief, p. 11). Instead, Appellants rely upon a circuitous argument that, while a felony was in fact committed, such commission did not cause Miller's injuries. (Appellants' Brief, pp. 12-14). The argument advanced by Appellants is similar to that used by the National Rifle Association by proclaiming "Guns don't kill people, people kill people." To sustain the arguments raised by either Appellants or the National Rifle Association, it is necessary to discard certain facts and causes in order to reach the conclusions urged by the various advocates. While the process will allow the results claimed it does so only at the loss of a logical causal connection which cannot be legitimately eliminated in the interpretation of an insurance policy.

Appellants argue that Miller was injured as a result of an automobile collision. At that point in time, according to Appellants, no felony had occurred by the mere intoxicated driving of Miller and the violent collision with the Heinz automobile. The argument then continues, that only after Heinz died five minutes after the accident did a felony actually arise and, therefore, it cannot be said under any theory that

Miller sustained injuries "arising out of" the felonious act. (Appellants' Brief, p. 14).

Paralleling this argument is a similar one which would be advanced by gun advocates. In a barroom brawl one person pulls out a .25 caliber pistol and points it at his adversary. He pulls the trigger, the gun goes off, a bullet is fired and the adversary falls dead from a bullet in the heart. The gun advocate would state that the real cause of death to the adversary was not the gun but was the person holding the gun since if he had not pulled the trigger the gun would not have gone off.

Superficially, both of these arguments may make some sense. A thoughtful analysis shows that both are equally fallacious. In the gun example, it is true that the person pulling the trigger initiated the events leading to the adversary's death. Had this person not had a working gun, had the person not had proper ammunition, or had the person not aimed the gun properly, the mere intent to harm the adversary would have resulted in no injury. Thus, no injury occurs whenever a person either has an inadequate weapon but has an intent to harm, or has a lethal weapon but does not attempt to use it. The true causal connection for the adversary's death, therefore, requires both a belligerent person and a working weapon. Both are the factual cause of the adversary's demise.

In the instant case a similar analysis can be made. The felony of manslaughter did not factually occur merely because Mr. Heinz died. Rather, it occurred because defendant Miller reckless collided with Heinz in an automobile thereby causing Heinz' death. Both the collision and the death were elements causally required in order for a charge of manslaughter to be made. It is completely illogical to focus upon the moment of Mr. Heinz' death rather than upon the event which caused the death. It was the initial collision in which defendant Miller sustained his injuries which proximately caused the death of Heinz and the manslaughter charge to be filed. Thus, the true focus of inquiry must be the acts giving rise to the moment of impact since the collision was the "event" which initiated the manslaughter conviction. It is immaterial whether Mr. Heinz died at the moment of collision, five minutes after the collision, or a month after the collision in determining whether Miller's injuries arose from a felonious act. Once Mr. Heinz died, an otherwise non-felonious collision became felonious and the resulting injuries, by definition, had to arise from that felony.

Several other courts have correctly dealt with similar cases. In Barker v. California Western States Life Ins., 61 Cal. Rptr. 595 (Cal. App. 1967), the insured had come from a party in which he had been drinking heavily. He was driving

his automobile on the wrong side of the freeway when he collided with another vehicle. Both the insured and the other driver were killed. An autopsy from the insured's body showed that he was legally intoxicated at the time of the accident. A policy of life insurance on the insured stated that the company would not be liable for any loss to which a contributing cause was the insured's "commission or attempt to commit a felony." The Court of Appeals upheld the finding of the lower court which denied coverage to the widow of the insured, based upon the exclusionary clause. The Court found that a felony had been committed since all of the elements required for a drunk driving felony were present -- namely, the driving of a vehicle under the influence of intoxicating liquor, the negligent driving of the vehicle, and an injury or death to a third person.

In Mainer v. American Hospital and Life Ins. Co., 371 S.W.2d 717 (Tex. 1963), the lower court found that the decedent's death had been caused by a head-on collision while the decedent was driving on the wrong side of the road while intoxicated. The court concluded, as a matter of law, that the insurer was not prohibited by law from including in its accidental death benefit rider, a limitation of coverage such that the accidental death benefit would not be paid where the insured died "while committing an assault or felony." The limitation was given full effect and the beneficiary was denied

recovery. The Court of Civil Appeals of Texas affirmed the lower court's decision.

Appellants rely upon the Colorado Supreme Court case of Penn Mutual Life Ins. Co. v. Gibson, 418 P.2d 50 (Colo. 1966), in making the causation arguments. This case supports the contents now made by Appellants but it is submitted by Respondent that the case is not well-reasoned and should not be followed by this Court. The reasoning of the Colorado Supreme Court is flawed, much like the previous gun-person example. The Colorado Supreme Court concluded that it was the automobile accident which killed the insured, not the fact that the automobile accident was legally termed a felony at the time it occurred, since a third person was injured. The Court chose to look at the direct cause of the decedent's death, i.e., the car collision, rather than to look at the overall picture that the car collision was deemed felonious under Colorado law and, thus, under the terms of the policy the decedent's death directly or indirectly resulted from the commission of a felony.

The Court of Appeals in California also rejected this type of causal reasoning. In Romero v. Volunteer State Life Ins. Co., 88 Cal. Rptr. 820 (Cal. App. 1970), the court cited the Colorado Supreme Court decision and compared it with the Barker decision, supra. The Court of Appeals stated:

[The Colorado Supreme Court] reasoning is wholly out of harmony with Barker, and accordingly cannot have our approval; nevertheless the Colorado decision assumes importance here because it emphasizes the fact there must be some causal relationship between the death of the insured and the commission of the felony. Id. at 823.

In Romero, the insured, while intoxicated, crashed into a pillar causing his death within seconds. A short time later a second vehicle collided with the wreckage, at which time that driver was injured. The California Court of Appeals concluded that the death of the decedent could not be deemed to have been in connection with a felony since his death preceded any injury to another person which was a required element of felony drunk driving. In other words, the injury to the second driver was too remote in time and in proximate causation to be deemed an essential element to the felony drunk driving offense. The Court approved, however, the decision in Barker, in which such remoteness was not present and the exclusion was held applicable.

A further contrast in interpretation of causation can be seen by examining the cited case of Appellants Schwartz v. John Hancock Mutual Life Ins. Co., 233 A.2d 416 (N.J. Super. 1967) (Appellants' Brief, p. 13), and McDaniel v. Country Life Ins. Co., 417 N.E.2d 1087 (Ill. App. 1981). Both cases involved deaths of insureds who were fleeing police officers. Both cases involved injuries to passengers who were in the vehicles

at the time the chase occurred. Both cases involved similar clauses which excluded insurance coverage to an insured whose death resulted directly or indirectly from committing a felony. The decisions and reasoning of both cases, however, are diametrically opposed.

In Schwartz, the District Judge of New Jersey concluded that even though a passenger was injured at the time the insured was fleeing from the police, and even though this conduct constituted criminal recklessness, which was a felony under New Jersey law, a sufficient causation had not been shown since it was the accident itself which caused the insured's death and not the related injury to the passenger.

In McDaniel, on the other hand, the Illinois Appellate Court denied coverage on the basis that the insured had violated two distinct felony provisions. First, he had fled from police officers and had caused bodily injury to another person. Secondly, he was guilty of criminal recklessness since he recklessly caused injury to another person. The court there stated:

Plaintiffs have presented no facts and no reasonable inference can be drawn which would indicate that Phillip Winkler did anything but knowingly, or recklessly, injure his passenger while fleeing an officer. It is also a reasonable inference from the record that he was guilty of criminal recklessness under Indiana law. In either event, he was guilty of a felony under those laws. Id. at 1089-1090.

Respondents submit that the analysis of the McDaniel court is the correct one to apply in these types of cases. The question should not be whether the direct causal injury resulted from all the elements of the felony since it may well be that the insured is accidentally killed even in the commission of an intentional felony. Thus, the direct cause of death should not be the focus, but rather, the question should be whether all of the elements necessary to constitute a felony are present at the time the insured is injured or killed. Thus, in the Schwartz case the correct analysis would be to conclude that while the insured was causally killed by the automobile collision the death proximately resulted from the commission of criminal recklessness and coverage should have been denied.

Likewise, in the instant case Mr. Miller was causally damaged by the automobile collision and that the collision arose out of a manslaughter felony. As long as all the elements necessary for the establishment of the felony exist and as long as there is a proximate causation to the event of that felony relating to the injuries or death, then the exclusion clause must be applied.

This principle is further shown in two additional cases. In Kaminsky v. Home Life Ins. Co., 258 N.Y.S.2d 266 (App. Div. 1965) a policy denied coverage to the insured if his death was caused either directly or indirectly by the commission of a

crime. The insured attempted to choke his wife at which time his wife stabbed the insured, causing his death. His wife, in seeking coverage, claimed that the stabbing was accidental.

The court denied coverage based upon the following reasoning:

Kaminsky died as the proximate cause of the assault on his wife. Whether or not he should have anticipated his wife's reaction is not a matter that requires trial. Mrs. Kaminsky was clearly being choked to death. In these circumstances, regardless of what Mr. Kaminsky might have anticipated and, for that matter, regardless of Mrs. Kaminsky's intent, the insured was engaged in a violent assault which provoked the stabbing, which resulted in his death. Even if he had fallen on the knife while struggling with his wife, so that his death might have been deemed accidental, it would nevertheless have been occasioned by his commission of the criminal act of assault. Id. at 270.

In Waters v. National Life & Accident Ins. Co., 156 F.2d 470 (10th Cir. 1946), the insurer claimed that it was not liable for double indemnity benefits under a life policy because the provision in that policy relieved the insurer from liability for death sustained in the connection with violation of law by the insured. Prior to decedent's death, he had been carrying on the illicit manufacture of whiskey. The cause of death was electrocution which occurred when he took hold of an electric light attached to an extension cord in the room which was filled with illicit whiskey. Although the court stated that for the exclusion to be applicable, the insurer was required to prove a causal connection between the violation of the law and the insured's death, the court held that a reasonable inference

could be drawn from the evidence that there definitely was a causal connection between the unlawful operation of the still and the accidental death of the insured. The exclusion was upheld and the insurer was relieved of liability.

In conclusion, the reasoning now argued by Appellants completely misconstrues the type of causation required in the application of this type of clause. The fallacy of Appellants' arguments can be seen with the following hypothetical. Assume that an insured believes that his neighbor has been having an affair with the insured's wife. Assume further that the insured confronts the neighbor on his lawn and engages in a fistfight. Assume further that under Utah law the fight is a simple assault and constitutes only a misdemeanor. Assume, however, that as a result of the fight the insured sustains injuries and the neighbor sustains injuries which later result in the neighbor's death. Finally, assume that the insured is charged with manslaughter and is convicted of the second degree felony.

Under Appellants' reasoning the policy provision would not apply since Appellants would argue that the death of the neighbor had no causal connection to the injuries sustained by the insured in the fight. They would contend that it was merely a misdemeanor fight which caused the injuries and that the fortuitous death of the neighbor resulting in a felony would not

exclude coverage. Such an argument must be logically rejected. It is obvious that the insured in such an instance was injured as a result of his acts which gave rise to the manslaughter felony. Once the neighbor dies as a result of the injuries sustained in the fight the clause becomes operative since the final element required for a felony has taken place. To simply say, as the Appellants have and as the Colorado Supreme Court has, that the death of the neighbor has no causal connection to the injuries of the insured completely misses the intention of these type of clauses as well as misinterprets the plain meaning of the English language.

There is no doubt that in the instance case defendant Miller sustained his injuries as a result of the collision which ultimately killed Mr. Heinz. Miller's injuries are both factually and proximately caused by the manslaughter offense and to argue that there is no relationship between the commission of the felony and his injuries is nonsensical. For these reasons the lower court correctly concluded that the exclusion clause prevented any recovery by the Appellants for the treatment and care of defendant Miller.

POINT III

THE CLAUSE CONTAINED IN THE CAPITOL LIFE
INSURANCE COMPANY POLICY IS NOT AMBIGUOUS
AND WAS CORRECTLY INTERPRETED BY THE LOWER
COURT.

Appellants spend a number of pages in their Brief attempting to create various ambiguities and inconsistencies in the language contained in the insurance policy. While Appellants have divided their attack into a number of subdivisions, their arguments can be basically summarized under two contentions: First, the felony of manslaughter which occurred by reckless conduct is not the type of specific intent felony contemplated by the insurance policy; secondly, only attempted felonies or assaults are encompassed by the policy and since this felony was actually committed it was not included. (Appellants' Brief, pp. 14-23).

There is nothing contained in the policy which requires a "specific intent" for the "felony" to be excluded. Appellants are attempting to insert the word "intentional" felony into the meaning of the policy when such word is clearly absent. There is no reason for the insurance carrier to exclude a reckless felony such as the one involved in this case when the result is manslaughter and encompasses the type of behavior which the language of the policy is intended to exclude.

Even the definition of "recklessly" as quoted by the appellants does not support the argument they now make. Recklessly

as defined in § 76-2-103(c), UTAH CODE ANN. (1953, as amended), is synonymous with "maliciously." The term "malice" is an evil intent, a state of mind shown by the intentions to do, or the intentional doing of something unlawful. (Webster's New World Dictionary, 2d College Ed., 1980). In addition, the Utah definition states that the perpetrator is aware of the unjustifiable risk that exists but consciously disregards that risk. Contrary to Appellants' assertion, even a reckless act is in many degrees "intentional."

The fact that Joel Miller was intoxicated at the time of the commission of the felony is also immaterial to the state of mind required. Section 76-2-305, UTAH CODE ANN. (1953, as amended) states "a person who is under the influence of voluntarily consumed or injected alcohol, controlled substances or volatile substances at the time of the alleged offense shall not thereby be deemed to be excused from criminal responsibility." Likewise, § 76-2-306, UTAH CODE ANN. (1953, as amended), states the following:

Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense; however, if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution of that offense.

Thus, as a matter of law, a person who is intoxicated cannot claim that he is unaware of his conduct because of such

intoxication. It follows that he must be deemed to have intentionally disregarded the risk by the conduct which he ultimately takes.

The courts in the previously cited cases have all held that felony drunk driving in which a death or serious injury occurred is the type of "felony" contemplated in these exclusion clauses. See Mainer, Barker, Romero, supra. Even the Supreme Court of Colorado in the Penn Mutual case, upon which Appellants rely in their causation argument, rejected the notion now argued by Appellants as to the specific intent requirement. The Supreme Court of Colorado in that cause stated:

The trial court directed the verdict, however, on the ground that the only felony contemplated by the agreement was one in which an insured set out with "the intent and purpose of committing a felony.

It is thereafter concluded that since the particular felony involved did not meet this criterion, the exclusionary provision could not take effect. For reasons hereinafter set forth, we do not agree with the basis of the trial court's holding
418 P.2d at 51.

Appellants make the statement that a person reading this clause would interpret the word "felony" to include the criminal element that he was doing something wrong, that he was committing a crime; doing something which all laypersons agree is evil, bad and not in accordance with the general principles of society. (Appellants' Brief, p. 20). It is difficult to

understand how, using this criteria, a layperson would not conclude that drunk driving resulting in manslaughter would not rise to the level of an evil and bad antisocial activity.

The quotations by Appellants as to the requirement of mens rea in our criminal system is completely irrelevant to the issue now before this Court. Obviously, the requirement of a specific intent is the norm with which criminal law proceeds. The Legislature has, however, created a number of crimes which are classified as felonies and which do not require a specific mens rea because of the seriousness of the conduct taking place. For example, § 76-5-207, UTAH CODE ANN. (1953, as amended), makes automobile homicide a felony of the third degree if criminal negligence can be shown; § 76-6-106, UTAH CODE ANN. (1953, as amended), makes criminal mischief a felony of the third degree whenever a person recklessly propels an object against a motor vehicle whether moving or standing; § 76-7-201, UTAH CODE ANN. (1953, as amended), makes the non-support of children a felony of the third degree; and § 76-5-109, UTAH CODE ANN. (1953, as amended), classifies any person who inflicts upon a child serious physical injury through reckless conduct a perpetrator of a third degree felony. Thus, the absence of a mens rea element in a felony conviction does not mean that such crime is not of a serious consequence which involves a grave evil to society.

The Oregon Supreme Court case cited by Appellants in their Brief as to the definition of an "accident" is totally irrelevant to the discussion concerning felony. Whether this incident was or was not an "accident" under the insurance policy is immaterial since the sole question presented here is whether the conduct amounted to a felony. (See Appellants' Brief, pp. 21-23).

Finally, Appellants argue that the plain meaning of the exclusion encompasses only attempted assaults or attempted felonies. (Appellants' Brief, pp. 17-18). The plain meaning of the clause "arising out of an attempt at assault or felony" is simply that any conduct by the insured will not be covered if it arises out of an effort to commit an assault or an effort in which a felony has been committed. The phrase "an attempt at assault" encompasses those instances where an insured attempts to inflict harm upon another but is unsuccessful. See, e.g., Bernard v. First National Life Ins. Co., 248 So. 2d 913 (Fla. 1971); Martin v. Massachusetts Mutual Life Ins. Co., 463 S.W.2d 681 (Pa. 1971); and Quaker City Life Ins. Co. v. Futson, 115 S.E.2d 699 (Ga. App. 1960).

As previously discussed, any conduct which "arises out of a felony" is also excluded regardless of whether the felony requires a specific mens rea. Furthermore, since attempts to commit a felony are themselves felonies, attempted felony

actions are also excluded. § 76-4-101, UTAH CODE ANN. (1953, as amended).

The language contained in the insurance policy of this case is considerably more liberal than that which has been upheld in other cases. For example, many policies preclude recovery when the insured has committed a "crime" or has violated the "law." See 43 AM. JUR. 2d § 579, Insurance, pp. 646-650; 45 C.J.S. § 785, Insurance, pp. 824-826. Under these provisions even a misdemeanor violation has been held to preclude recovery by an insured. Thus, the requirement of the policy in this case that such exclusion only apply to "felonies" is a fair and equitable attempt by the insurance carrier to only exclude reprehensible conduct which as a matter of public policy should not be financed by other policy holders.

In conclusion, the language contained in the insurance policy issued to defendant Joel Miller is clear and unambiguous. While Appellants attempt to construct various degrees of interpretation of this language, the facts giving rise to this case leave no question but that the manslaughter conviction of Miller is the type of "felony" included in the exclusion provision. Appellants have attempted by the use of contorted lexicology to assert that the reckless and drunk driving of defendant Joel Miller resulting in the death of an innocent motorist is somehow not the type of evil conduct excluded by these type

of provisions. The lower court was eminently correct in concluding that this clause excluded any coverage for the injuries of Miller.


CONCLUSION

The purpose of these types of clauses is to reduce improper risks from insurance coverage. It is hardly appropriate for policy holders to have to pay premiums to support the medical bills of someone who is shot in a bank holdup, injured in a barroom brawl, or killed because of their own drunk driving.

Certainly second degree manslaughter cannot be dismissed as extremely serious conduct which should not be covered by insurance benefits. Mr. Miller intentionally became intoxicated, intentionally drove an automobile, and unfortunately is now suffering both physically and financially as a result of his actions. The tragedy to all those involved in this accident can never be eliminated regardless of what monetary adjustments are made. However, the policyholders of Capitol Life Insurance Company should not also be made to suffer by imposing coverage for a risk which was clearly excluded by the policy.

The judgment of the lower court shall be affirmed.

DATED this 17th day of March, 1986.



DAVID W. SLAGLE
Attorney for Respondent
Capitol Life Insurance Company

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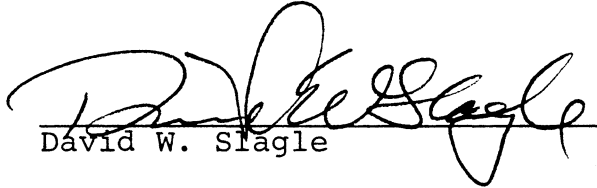
MAILING CERTIFICATE

I certify that I mailed four copies of the foregoing Appellant's Brief to the following parties by placing a true copy thereof in an envelope addressed to:

Ronald J. Yengich
Attorney for Defendants, Miller
72 East 400 South, #355
Salt Lake City, Utah 84111

Thomas A. Duffin
Hans M. Scheffler
Attorneys for Plaintiffs/Appellants
311 South State St., Suite 380
Salt Lake City, Utah 84111

postage prepaid, this 17 day of March, 1986.


David W. Siagle