

1980

# Allstate Insurance Company, A Corporation v. Richard Bruce Anderson : Petition For Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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ALLSTATE INSURANCE COMPANY, :  
Plaintiff and Appellant :  
vs : Case No. 16411  
RICHARD BRUCE ANDERSON, :  
Defendant and Respondent :

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PETITION FOR REHEARING

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Appellant, Allstate Insurance  
Company

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Logan, Utah 84321

Attorneys for Defendant - Respondent

**FILED**

MAR 10 1980

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Clerk, Supreme Court, Utah



Plaintiff-Appellant, Allstate Insurance Company (hereinafter "Allstate"), pursuant to Rule 76(e), Utah Code of Civil Procedure petitions the Honorable Court for re-hearing of the above captioned action in light of the opinion of the Court dated March 3, 1980. In support of said Petition "Allstate" submits the following:

POINT I

THE COURT'S OPINION HAS COMPLETELY ALTERED THE SETTLEMENT AGREEMENT MADE BY THE PARTIES TO THE TORT ACTION, RESULTING IN A WIND FALL TO TORT PLAINTIFF, AND A DOUBLE PAYMENT BY THE TORT DEFENDANT'S INSURER.

17 AM, Jur 2d CONTRACTS, \$458:

"Inasmuch as a contract is a solemn and binding obligation between the parties thereto, it cannot be set aside and held for naught by the parties themselves without cause unless both parties consent."

During the settlement negotiations, and in order to clarify any misunderstanding on the terms of the settlement agreement as to the terms of settlement of the tort action, Attorney Bennett in behalf of the tort defendant and his insurer, State Farm Insurance Company, wrote to Attorney Daines. (See page 4 of "Allstate's" Brief):

"....and at no time did I ever intend to offer Mr. Anderson \$10,000.00, and then have to deal separately with Allstate on any portion of the claim that they had..."

The settlement was then agreed to and a full release executed, releasing the defendant "and all other persons, firms, and corporations..."

The Honorable Court's opinion, which is based entirely on the majority opinion in ALLSTATE INSURANCE COMPANY vs IVIE AND TRAVELERS, February 7, 1980, No. 15983, in which Travelers have filed a Petition for Rehearing, has "set aside and held for naught" the clear contract of settlement between the contracting parties.

The Court, in the Ivie opinion, and therefore in the opinion here, for no reason announced, has altered the clear settlement contract, and has granted Mr. Anderson a "wind fall", which this Court in JONES vs TRANSAMERICA, 592 Pac., 2d 609 previously held he was not entitled, and which he knew he would not receive, and has also saddled the tort defendant's insurer with a double payment, which they had refused to pay before the settlement was finalized.

This Court has long since recognized the sanctity of a valid contract between parties. In EPHRAIM THEATRE CO. vs HAWK, 321 Pac. 2d 331, 7 Utah 2d 163, at 166:

"Generally speaking, neither of the parties, nor the Court has any right to ignore or modify conditions which are clearly expressed merely because it may subject one of the parties to hardship, but they must be enforced 'in accordance with the intention as...manifested by the language used by the parties to the contract'."

(Emphasis added), citing several prior Utah holdings.

CONCLUSION

For the above reasons, and further that a Petition For Rehearing has been filed in the ALLSTATE vs IVIE AND TRAVELERS case, on which this case was decided, "Allstate" prays that the Court grant its petition for Rehearing of the Court's opinion in the above captioned case.

DATED this 9<sup>th</sup> day of March, 1980.

Respectfully Submitted:



L. E. MIDGLEY  
Attorney for Allstate Insurance  
Company, Plaintiff - Appellant

CERTIFICATE OF SERVICE

This is to certify that on the 10<sup>th</sup> day of March, 1980,  
I mailed, postage prepaid, two copies of this Petition for  
Rehearing to N. George Daines and David R. Daines, Attorney  
for Defendant-Respondent, 128 North Main, Logan, Utah 84321.

A handwritten signature in black ink, appearing to read "K. W. Wiley", is written over a horizontal line. The signature is cursive and somewhat stylized.