

1988

William Ray Gagon v. State Farm Mutual Automobile Insurance Company : Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Gagon v. State Farm*, No. 880060.00 (Utah Supreme Court, 1988).
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~~BRIEF~~

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DOCKET NO. 880060

IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM RAY GAGON,)

Plaintiff,)

vs.)

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Defendant-Petitioner,)

Category 13

PETITIONER'S REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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WILLIAM RAY GAGON,)	
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Plaintiff,)	
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<u>Western Casualty & Surety Co. v. Marchant</u> , 615 P.2d 423 (Utah 1980)	3

STATEMENT OF THE CASE

Petitioner State Farm respectfully maintains that several of the facts contained in plaintiff/appellant's brief in opposition to the instant petition seriously mischaracterizes several critical facts. Petitioner, therefore, submits the following statement of facts to clarify the factual background of this case.

First, plaintiff mischaracterizes the October 18, 1983 correspondence from Mr. Leon Maxwell to plaintiff. Plaintiff maintains that the letter indicated that State Farm "would not pay for any of the engine damage and that it would pay only for the damage to the spoiler and the dented oil pan." (See Plaintiff's Brief at 5). Plaintiff further suggests that State Farm was guilty of bad faith since the employees who handled the plaintiff's claim had not referred to the company's claims handling manual. Plaintiff likewise represents that State Farm has never paid "claims similar to Mr. Gagon's". (Plaintiff's Brief at 10). Finally, plaintiff infers that there was no doubt in the minds of State Farm's employees that the internal damage to the engine was the result of the vehicle's impact with the metal object on the highway. Id.

A careful review of the record corrects several of the characterizations made by plaintiff. State Farm's letter of October 18, 1983, explained State Farm's position and invited plaintiff to send "any applicable repair bills from you relating to this matter." (See Addendum). Thereafter, plaintiff never submitted any invoices to State Farm nor did he personally contact

State Farm. State Farm's next contact with the plaintiff was through their first attorney. After State Farm discussed the matter with plaintiff's first attorney, nothing further was heard until plaintiff filed suit through a second attorney.

The record also clearly shows that the individuals handling the plaintiff's claim were very familiar with the provisions of the State Farm policy manual. (R. at 446, 447, 485). In addition, the State Farm policy manual does not "mandate" coverage for internal damage to vehicle's engine. The State Farm policy manual conditions any such coverage as follows:

There should be a reasonable compliance with that condition of the policy which provides, "when loss occurs the named insured shall use every reasonable means to protect the damaged property covered by this policy from any further damage."

* * *

[P]ayment should not include any amount for damage resulted from the further operation of the vehicle after damage to the oil pan or to the motor has become known to the operator, or after the existence of damage should have become known by the operator exercising reasonable care.

The record also establishes that State Farm's employees understood the exact nature and cause of the damage to the plaintiff's vehicle. State Farm denied coverage for the engine damage on the grounds that plaintiff failed to exercise reasonable care to prevent further damage to the damaged vehicle. The position taken by State Farm on the claim was supported at trial by the testimony of independent experts. The testimony at trial established at a minimum that coverage for the engine damage was

fairly debatable.

Finally, the record at trial demonstrates that State Farm had always attempted to pay engine damage claims on a compromise basis. (R. 442, 459).

ARGUMENT

POINT I.

THE COURT OF APPEALS ACKNOWLEDGED THAT STATE FARM'S BASIS FOR DENYING PLAINTIFF'S CLAIM WAS FAIRLY DEBATABLE.

The Court of Appeals noted in its opinion:

In addition, there was conflicting testimony as to whether the loss of lubrication occurred within seconds of impact with the metal object or whether plaintiff caused the damage by continuing to operate the vehicle Gagon, 746 P.2d at 1196.

The testimony of State Farm's experts clearly established that there was reasonable grounds for finding that the internal damage to plaintiff's engine was the result of his continuing to operate the vehicle after striking the object in the highway. As this court noted in Western Casualty & Surety Co. v. Marchant, 615 P.2d 423 (Utah 1980), the Court of Appeals noted in Callioux v. Progressive Insurance Co., 745 P.2d 838 (Utah Ct.App. 1987), where there exists a debatable reason for denying a claim, a claim for bad faith cannot exist. The Court of Appeals committed error in reversing the directed verdict on plaintiff's claim of bad faith against State Farm.

POINT II.

THE STANDARD URGED BY PLAINTIFF FOR PUNITIVE DAMAGES IN THE INSTANT CASE CONFLICTS WITH THIS COURT'S DECISION IN BECK v. FARMERS INSURANCE EXCHANGE.

Plaintiff contends that punitive damages must be allowed in the instant case since without such damage he would be without any "effective redress or recourse whatsoever." (Plaintiff's Brief at 15). That is not the standard for awarding of punitive damages in an insurer bad faith action. This court noted and rejected such a proposition in Beck v. Farmers Insurance Exchange, 701 P.2d 795 (Utah 1985). The standard established by this court in Beck clearly requires the commission of an independent tort by the insurer before punitive damages may be awarded. Without the commission of an independent tort, a breach of the implied or express duties under a contract of insurance can give rise only to a cause of action in contract, not one in tort. Id. at 800. Punitive damages may not be awarded for breach of contract, even if intentional and unjustified. See Hal Taylor Associates v. Union America, Inc., 657 P.2d 743, 750 (Utah 1982).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this court grant certiorari to review the decision of the Utah Court of Appeals in this case.

Dated this 31st day of March, 1988.

STRONG & HANNI

By

Paul M. Belnap

Stephen J. Trayner

Attorneys for Petitioner

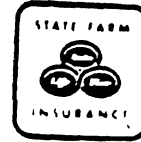
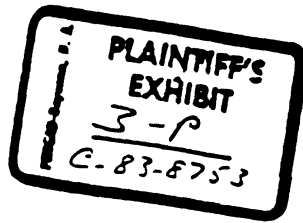
CERTIFICATE OF HAND DELIVERY

I hereby certify that 4 true and correct copies of the foregoing Reply Brief were hand delivered this 31st day of March, 1988, to the following:

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Salt Lake City, Utah 84111

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Paul M. Belnap

ADDENDUM



State Farm Mutual Automobile Insurance Company

October 18, 1983

STATE FARM INSURANCE COMPANIES
Salt Lake Valley Service Center
4551 South Atherton Drive
Salt Lake City Utah 84107

William Ray Gagon
11878 Hidden Valley Drive
Sandy, UT 84047

CERTIFIED MAIL
Return Receipt Requested

Dear Mr. Gagon:

RE: Our Claim Number: 44-565-742
Date of Loss: 9-17-83

Our records indicate that you presented a claim under your automobile policy 480-3593-44A for a loss that occurred on September 17, 1983 on the frontage road parallelling Interstate 80, west of the Salt Lake International Airport.

You had requested coverage for this loss be extended not only for the collision damage incurred as a result of colliding with the object in the roadway, but also for the damage to the internal parts of the engine as a result of improper lubrication.

Our investigation of this loss established the damages sustained to the internal parts of the engine were not a result of a collision loss but rather a result of a mechanical failure, wear and tear, and not reimbursable under your automobile policy.

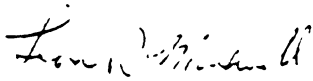
We therefore must regretfully advise you that State Farm does at this time disclaim coverage for that portion of your claim.

We will, however, reimburse you or pay the repairing shop if you so desire, for the damages sustained to your car caused by the collision in excess of your \$200 deductible, also to include the reasonable towing expenses you may have incurred. We would appreciate receiving any applicable repair bills from you relating to this matter.

William Ray Gagon
October 18, 1983
Page 2
44-565-742

We thank you for your cooperation and patience during our investigation and your presentation of this claim.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Leon R. Maxwell".

Leon R. Maxwell
Property Claim Superintendent

LPM:sm

cc: State Farm Agent Jay Rex Kocherhans

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