

1980

Stanley L. Larson v. Wycoff Company, A Utah Corporation, Galbraith & Green, Inc., A Utah Corporation, and the Lafayette Life Insurance Company, An Indiana Corporation : Brief of Respondents Galbraith & Green and Wycoff Company

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Richard G. MacDougall; Attorney for Appellant Richard H. Moffat, James R. Brown, John A. Snow; Attorneys for Respondents

---

#### Recommended Citation

Brief of Respondent, *Larson v. Wycoff*, No. 16970 (Utah Supreme Court, 1980).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/2232](https://digitalcommons.law.byu.edu/uofu_sc2/2232)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).



IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

STANLEY L. LARSON,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	
WYCOFF COMPANY, a Utah	)	Case No. 16970
corporation, GALBRAITH &	)	
GREEN, INC., a Utah corpo-	)	
ration, and THE LAFAYETTE	)	
LIFE INSURANCE COMPANY, an	)	
Indiana corporation,	)	
	)	
Defendants-Respondents.	)	

---

BRIEF OF RESPONDENTS  
GALBRAITH & GREEN AND WYCOFF COMPANY

---

APPEAL FROM SUMMARY JUDGMENT OF  
THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, HONORABLE  
BRYANT H. CROFT, PRESIDING

---

Richard G. MacDougall  
321 South Sixth East  
Salt Lake City, UT 84102

Attorney for Appellant

Richard H. Moffat  
Attorney for Wycoff Company  
261 East 300 South, Suite 300  
Salt Lake City, UT 84111

James R. Brown  
Attorney for Galbraith & Green  
370 East South Temple, Suite 401  
Salt Lake City, UT 84111

John A. Snow  
Attorney for Lafayette Life  
141 East First South  
Salt Lake City, UT 84111

Attorneys for Respondents

## TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE . . . . .	1
DISPOSITION IN LOWER COURT . . . . .	2
RELIEF SOUGHT ON APPEAL . . . . .	2
STATE OF FACTS . . . . .	2
ARGUMENT:	
POINT I	
PLAINTIFF KNEW OF THE REQUIREMENT THAT HE BE A FULL-TIME EMPLOYEE IN ORDER TO RECEIVE THE HEALTH AND ACCIDENT BENEFITS . . . . .	4
POINT II	
IN DIRECT CONFLICT WITH ALL OF THE ABOVE-CITED PORTIONS OF HIS DEPO- SITION, THE PLAINTIFF CLAIMS TO HAVE BEEN TOLD THAT HE COULD CONTINUE WITH HIS EMPLOYEE INSURANCE BENEFITS . . . . .	8
POINT III	
THE FACT THAT PAYMENTS WERE MADE BY MISTAKE WHEN THE PLAINTIFF WAS NOT ELIGIBLE FOR RECEIVING BENEFITS DOES NOT BIND WYCOFF COMPANY TO ANY FURTHER PAYMENTS . . . . .	13
POINT IV	
WYCOFF COMPANY IS NOT LIABLE FOR ANY CLAIM MADE UNDER THE LAFAYETTE LIFE INSURANCE COMPANY POLICY . . . . .	14
CONCLUSION . . . . .	14

## AUTHORITIES CITED

19 Am. Jur.2d, Corporations, § 1174 . . . . .	13
Couch on Insurance 2d, Volume 18, § 74:189 . . . .	13
Fletcher Cyclopedia, Corporations Volume 2 Chapter 11 § 733 . . . . .	11

## STATUTES CITED

31-20-11 Utah code Annotated, 1953, as amended (Supp. 1979) . . . . .	14
--	----

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

STANLEY L. LARSON,                     )  
  )  
Plaintiff-Appellant,                 )  
  )  
vs.   )  
  )  
WYCOFF COMPANY, a Utah                )  
corporation, GALBRAITH &             )  
GREEN, INC., a Utah corpo-            )  
ration, and THE LAFAYETTE            )  
LIFE INSURANCE COMPANY, an           )  
Indiana corporation,                   )  
  )  
Defendants-Respondents.                )

Case No. 16970

---

BRIEF OF RESPONDENTS  
GALBRAITH & GREEN AND WYCOFF COMPANY

---

APPEAL FROM SUMMARY JUDGMENT OF  
THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, HONORABLE  
BRYANT H. CROFT, PRESIDING

---

STATEMENT OF THE NATURE OF THE CASE

This case involves a claim by appellant for payment of group health and accident benefits and life insurance denied to appellant by his employer Wycoff Company and Lafayette Life Insurance Company.

## DISPOSITION IN LOWER COURT

The District Court granted summary judgments in favor of respondents dismissing appellant's complaint.

## RELIEF SOUGHT ON APPEAL

Respondents seeks affirmation of the summary judgments.

## STATEMENT OF FACTS

Wycoff Company employed Stanley L. Larson from approximately March 20, 1977 until May, 1979. Mr. Larson commenced working for Wycoff on a part-time basis on the dock. In May, 1977, he transferred from part-time to full-time employment and remained full-time until September, 1978, when he transferred to the diesel shop as a part-time employee. Mr. Larson desired to return to school and the part-time employment was made at his discretion.

Wycoff provides for its full-time employees two insurance programs. One is a health and accident insurance, which is self-funded by Wycoff, and the other is a life insurance program, which is covered by a group policy issued by Lafayette Life Insurance Company. Galbraith & Green, Inc., a Utah corporation, is the administrator of the health and accident program for Wycoff, and upon receipt of monthly computer

lists of eligible employees from Wycoff, forwards the same to Lafayette Life Insurance Company for its records.

At the time Mr. Larson became a full-time employee, he was provided with a "red book" which Wycoff provides to all of its full-time employees and in which, among other things, are described the benefits available to employees and defines those who are eligible. After being a full-time employee for thirty days, Mr. Larson completed the necessary application forms in order for he and his dependents to be insured under the health and accident and group life insurance policies offered in the "red book" as employee benefits. Mr. Larson admits that, prior to the time he transferred to the diesel shop, he was putting in 40 hours a week. After he transferred to the diesel shop, he was putting in 25 to 30 hours a week. Mr. Larson had read the "red book," not once but on a number of occasions, and there is no doubt that he understood the language contained therein regarding the employee benefits and the eligibility requirements, together with all of the other various rules and regulations of the employer.

It is Mr. Larson's claim that when he transferred from full-time to part-time employment, he received oral assurances from at least one supervisor that he would remain covered under the "benefits" offered by Wycoff. Subsequent to his becoming a part-time employee, Wycoff, through its administrator, Galbraith & Green, Inc., paid Mr. Larson some medical expenses for his minor son which, under the program, would not have been payable

because of his becoming an ineligible employee when becoming part-time. Wycoff Company has chosen not to seek reimbursement of those funds from Mr Larson, although it is Wycoff's position that it could do so.

The medical expenses which are the subject matter of this action, were incurred primarily for treatment of appellant's 20-month old son, Joshua, who had incurred an illness which resulted in his death on January 7, 1979. Under the group life policy, appellant, if eligible, would be entitled to \$2,000.00 in dependent life insurance proceeds.

This action has been brought by Mr. Larson to recover the medical expenses incurred after he was no longer covered by reason of becoming a part-time employee, and to recover the group life insurance benefits under the policy with Lafayette Life Insurance Company.

## ARGUMENT

### POINT I

PLAINTIFF KNEW OF THE REQUIREMENT THAT HE BE A FULL-TIME EMPLOYEE IN ORDER TO RECEIVE THE HEALTH AND ACCIDENT BENEFITS.

In the plaintiff's deposition taken September 16, 1979, by the undersigned, the following questions and answers appear on pages 11 and 12 regarding the delivery to him of the "red book" and his examination thereof:

Q. May of '77 you were delivered what they called a red book?

A. Yes.

Q. Now, that redbook had within it a description of the health and life insurance program--

A. Yes.

Q. --is that correct?

A. Yes.

Q. And it had within it information about when you were eligible and when you weren't eligible; is that correct?

A. Yes, it did.

Q. Did it have in there a page that told you that full-time employees were eligible?

A. Yes.

Q. Let me show you a copy of a page out of the document--at least, I believe it to be--and ask you if you recognize that as being page 1 under "Definitions" (handing).

(Witness examines.)

A. This appears to be that same page.

Mr. Moffat: Let's mark that.

(Wycoff Exhibit A was marked for identification.)

You will note that the Exhibit was marked as Exhibit A to the Larson deposition and sets forth, inter alia, the eligibility requirements for participation in the insurance program. One of those requirements is that the employee be full-time for thirty days before becoming eligible. Later, in that same deposition, at pages 18 and 19, Mr. Larson was asked the following questions and responded as set forth:

Q. Let me show you a copy of page of--I believe it came out of the red book--and ask you if you recognize that (handing).

(Witness examines.)

A. Okay. This looks like to be the same one that's in that book.

(Wycoff Exhibit B was marked for identification.)

Q. And it's correct, is it not, Mr. Larson, that that document in the first paragraph reads:

"Employees: All active full-time employees may be included in the company's group benefit plan the first of the month following completion of 30 days of service, provided they complete an enrollment card, as required by the personnel office, and they are working as full-time employees 40 hours or more per week."

A. That's what it says.

Q. And you think that's the same as was in the red book you had?

A. I think it's the same.

That document is attached as Exhibit B to the Larson deposition. On pages 20 and 21, Mr. Larson was asked the following questions, to which he responded as follows:

Mr. Larson, while we've been off the record your counsel has furnished us with copies of pages 33 and 36 of what you have identified as being in the red book. Do you recognize those pages as having been in your red book?

A. Yes.

Q. Did you read through the red book?

A. Yes.

Q. On more than one occasion?

A. I looked through it from time to time.

Q. And you're familiar with the provision on the top of page 36 that reads--I'll let you look at it while I read it from my copy. This is the third paragraph.

"All regular, full-time employees who have worked for the company for a period of not less than 30 days are eligible to apply for the group insurance program." You were familiar with that provision?

A. Yes.

Q. In fact, you had applied, had you not, to become eligible when you went full-time?

A. Well, I would have, but I was helped a great deal by the supervisor, Mel.

Q. I understand that. But you did have to sign a card of some kind in order to become qualified?

A. Yes.

Q. Do you recall doing that?

A. I believe I did.

It is perfectly apparent from reading the foregoing excerpts from the Larson deposition that Mr. Larson not only knew of the privilege of enrolling in the insurance programs after becoming a full-time employee for 30 days, but, further, that in fact he did enroll and fill out the necessary application forms and submit them to the company in order to obtain coverage.

POINT II

IN DIRECT CONFLICT WITH ALL OF THE ABOVE-CITED PORTIONS OF HIS DEPOSITION, THE PLAINTIFF CLAIMS TO HAVE BEEN TOLD THAT HE COULD CONTINUE WITH HIS EMPLOYEE INSURANCE BENEFITS.

In spite of all of the language quoted from plaintiff's own deposition, as set forth above, he, nevertheless, claims that two supervisors advised him that he could continue with his benefits if he transferred to the diesel shop, even though he was going part-time. The following language commences on page 13 of the plaintiff's deposition. This is a conversation alleged by the plaintiff between himself and an individual named Floyd Rowley, who is a supervisor over the line driver portion of Wycoff Company:

Q. When did you have a discussion with him?

A. When I--I had talked to him sometime previous about transferring to the diesel shop; and he hemhawed around and said, "We'll get to it, we'll get to it." And it finally got down to where the other supervisor, this Jay Williams, out in the shop, was putting it to me? "Either you get this transfer through or something, or we'll have to find somebody else." We need an employee out here for the shop. So let's get it done."

So I went to Floyd, and I said, "If you don't get this transfer in, I'll have to quit." I talked to Jay about it. "I'll quit Wycoff, the driver part of it, and start working for Wycoff in the diesel shop."

Now, Floyd told me that that was a dumb thing to do, because if I did I would lose all of my benefits and that I should wait and be transferred out there so that I could retain my benefits.

Q. Did he define what benefits he was talking about?

A. I understood that it would be all benefits. he didn't limit it and say, "You'll get this, and you'll get that."

Q. He just said "benefits"?

A. He said "all benefits."

Q. Did he at that time know that you were going out there on less than a 40-hour work week?

A. As far as I know, he did.

Q. Had you discussed it with him?

A. I had discussed it with him and Jeff that the reason--one of the reasons that I was moving out there is because I would be going back to school.

Another conversation allegedly had between Floyd Rowley and the plaintiff, or Jay Williams and the plaintiff, commencing on page 15 in his deposition is as follows:

Q. And that was when you had the conversations you described with Floyd Rowley about you should transfer to retain your benefits?

A. Right.

Q. Did you have any conversations with him or anybody else specifically about your insurance?

A. Well, I told Jay what Floyd had said, and he said he didn't know about it, but he'd check on it.

Q. Who is Jay?

A. Jay Williams. He's the shop foreman.

Q. When did you tell him that?

A. Oh, on or about the same day.

Q. Is that the day you transferred or--

A. No, it was a couple of days before.

Q. Now, what did you tell him specifically?

A. Jay?

Q. Yes.

A. I told him what Floyd had told me.

Q. And that was--

A. That I should wait in order to--and be transferred rather than quitting, so that I could retain all my benefits.

Q. What did Jay say to you in that regard, if anything?

A. He says, "well, if it's going to mean the difference between your having your benefits or not, maybe you'd better wait a couple of days and be transferred.

Q. You said he indicated he was going to check on something for you?

A. Right.

Q. What was he going to check on?

A. When we was discussing about the benefits and things a little bit after that, he said he didn't know about it, but he'd check on it about the benefits and things.

Q. Did he ever have another conversation with you about benefits or about insurance?

A. No.

Q. Did you ever ask him?

A. No, I don't believe I did.

Q. During this whole period of time you've had in your possession a copy of the red book?

A. Uh huh.

In reviewing the plaintiff's deposition, it becomes clear that the highest level of authority that anybody could rise to who spoke to him would either be the supervisor over the line drivers, who was Floyd Rowley, or a supervisor out in the shop named Jay Williams. The one was rather confused about what he told him and he talked about benefits in general, there being included within the "red book" numerous benefits in general, not just those relating to insurance. The other supervisor, that being Jay Williams, told him that he would, in effect, check the matter out and get back to him, which he (Williams) did not do. Thereafter, the plaintiff never checked again with anybody about benefits or about insurance. During the whole of that period of time, he had in his possession a copy of the "red book," describing the benefits, and he admitted that he had read it on more than one occasion and was familiar with those requirements.

It might be further noted that these two supervisors could not bind the corporation under any circumstance. First, these were not officers or agents of the corporation. Second, they had no authority to bind the corporation in any way whatsoever. In Fletcher Cyclopedia Corporation, Volume 2, Chapter 11, Section 733, it is stated as follows:

Declarations or admissions of an officer or agent of a corporation are not binding upon it, nor admissible in evidence against it for any purpose, unless they were made by the officer or agent in the course of a transaction on behalf of the corporation, and within the scope of his authority, or unless they were expressly authorized by the corporation, or have since been ratified by it.

There is no claim that anyone Mr. Larson spoke with rises to the authority of an officer or agent, nor is there any indication or claim that the people with whom Mr. Larson spoke had authority to bind the corporation in relation to the coverage of benefits.

As found in 19 Am. Jur.2d, Corporations, Section 1174, page 600:

Owing to the enormous scope of the business of the present-day corporations, their business is frequently divided into departments, and managers or superintendents of the departments are appointed. The manager or superintendent of a department stands in the same relation to his department as does the general manager or superintendent to the general affairs of the corporation, and the corporation is liable for his accounts within the apparent scope of his authority.

Neither of the people that Mr. Larson spoke to stood in the position of running the insurance department or of the other employee benefit areas. As a matter of fact, as noted in the quote from Mr. Larson's deposition, as found on page 15, at lines 11 through 14, Jay Williams agreed to check out what Mr. Rowley said to the plaintiff about his ability to continue with his benefits. But, as also noted, he never responded to the plaintiff and the plaintiff did nothing further to check upon the matter. Under these circumstances, it is apparent that the two supervisors had no authority to bind Wycoff Company or Galbraith & Green, Inc.

### POINT III

THE FACT THAT PAYMENTS WERE MADE BY MISTAKE WHEN THE PLAINTIFF WAS NOT ELIGIBLE FOR RECEIVING BENEFITS DOES NOT BIND WYCOFF COMPANY TO ANY FURTHER PAYMENTS.

Wycoff paid, through a mistake by its administrator, Galbraith & Green, Inc., approximately \$1,200.00 in medical bills, which it was not obligated to pay after the plaintiff became a noneligible employee. As noted above, Wycoff Company elects not to sue to recover these amounts, but it could. As is said in Volume 18, Couch on Insurance 2d, Section 74:189, "Right of Insurer to Recover Payments":

As a general rule, if the insurer pays a loss, being induced so to do by fraud, or by mistake as to facts which, if it had had knowledge thereof, would have been a sufficient defense in an action by the insured upon the policy, the money so paid may be recovered. (Citing numerous cases.)

Under the circumstances contained herein, where the plaintiff was a noneligible employee, there is no doubt about the fact that payment was made under a mistake of fact. If the insurer, in this case Wycoff Company through Galbraith & Green, Inc., could recover payments made by mistake, a fortiori, it could refuse to make any further payments to a noneligible employee.

#### POINT IV

WYCOFF COMPANY IS NOT LIABLE FOR ANY CLAIM MADE UNDER THE LAFAYETTE LIFE INSURANCE COMPANY POLICY.

The policy of insurance sued upon by the plaintiff runs from Lafayette Life Insurance Company to the plaintiff. While Wycoff Company paid the premium, it had no other connection with the policy, other than being the employer of the group that was insured and obligated to make the premium payment for each of the qualified employees, which it did.

Appellant's argument that the statutory provisions of 31-20-11, U.C.A. (Supp. 1979) relating to conversion privilege is not appropriate for two reasons. First, the health and accident coverage (a self insured program) administered by Galbraith & Green, Inc., is not convertible upon termination. Second, the statutory law is not retroactive and there is no common law which would give appellant the relief he seeks.

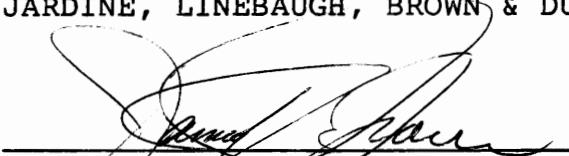
#### CONCLUSION

It is clear from the deposition of the plaintiff himself that he became a noneligible employee and, thus, no longer was entitled to coverage under either the health and accident or the life insurance policies. The plaintiff admittedly knew of the requirement that he be a full-time employee, as he first worked for Wycoff Company as a part-time employee and was not then eligible for the benefits, a fact

which he admitted. Later, he became a full-time employee, applied for and received employee benefits, and had full knowledge of the requirements, as set forth in the "red book." The plaintiff has been paid all of the benefits to which he was entitled and, in fact, has been overpaid. Under the circumstances, summary judgment in favor of the defendants and against the plaintiff must be affirmed.

Respectfully submitted.

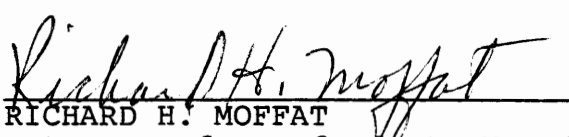
JARDINE, LINEBAUGH, BROWN & DUNN



---

James R. Brown  
Attorneys for Defendant, Galbraith  
& Green, Inc.

MOFFAT, WELLING & PAULSEN



---

RICHARD H. MOFFAT  
Attorneys for Defendant, Wycoff  
Company, Inc.