

1982

# General Motors Acceptance Corp. v. Hector Martinez et al : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

GENERAL MOTORS ACCEPTANCE )  
CORPORATION, a New York )  
corporation, )

Plaintiff-Respondent, )

vs. )

HECTOR MARTINEZ and MANUEL M. )  
RIVERA, )

Defendants - Appellants, )

Case No. 13072

vs. )

GREAT EQUITY LIFE INSURANCE )  
COMPANY OF CHICAGO, ILLINOIS; )  
STREATOR CHEVROLET COMPANY, )  
INC.; AL BARRUTIA; GREGG H. )  
JENSEN; and E.C. ROSEBOROUGH, )

Third-Party Defendants- )  
Respondents. )

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PETITION FOR REHEARING

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Acceptance Corporation

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Case No. 18072

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PETITION FOR REHEARING

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Now comes Third-Party Defendant-Respondent, Great Equity Life Insurance Company (hereinafter Great Equity), pursuant to Rule 76(e), of the Utah Rules of Civil Procedure, and petitions this Court for rehearing of the above-captioned appeal in light of the opinion of this Court filed on May 24, 1983. As required under Rule 76(e)(1) and is permitted under the decisions of this Court, Third-Party Defendant-Respondent, Great Equity, hereby sets forth certain points in support of its petition.

POINT I

THE OPINION OF THE COURT WILL HAVE A CHILLING  
EFFECT ON COMMERCE AND IS OVERLY BURDENSOME  
AND OPPRESSIVE TO THE INSURANCE INDUSTRY.

The result of the Court's ruling in the above-captioned appeal may be to force insurance companies to drastically alter their present practice with respect to the sale of insurance policies. Under the rationale of the Court, an insurance company can no longer continue the standard practice of mailing a copy of its policy to an insured, since an insured would not be bound by any of the policy provisions and/or exclusions, unless the insurance company could conclusively demonstrate that an insured received a copy of the insurance policy. Obviously, this creates a disastrous result in the insurance industry. In order to protect

against this situation, it would be necessary for an insurance company to have all copies of its policies delivered personally, or sent by registered mail in order to provide a means by which it can demonstrate that the insured received a copy of the policy. This would have a chilling effect on commerce and would be overly burdensome and oppressive to the insurance industry.

Great Equity contends that the Court's interpretation of Utah Code Annotated 31-34-6(1) is overly broad, in that said statute only requires that a copy of the policy or certificate of insurance be "delivered to the debtor." It certainly does not go so far as to specify the means by which said delivery should be effected, nor does it preclude mailing as is a means of complying with the statute. Moreover, the statute does not say that a debtor must receive a copy of the policy or certificate of insurance.

With respect to insurance applications, it should be pointed out that, contrary to the facts stated in the Court's opinion, Mr. Martinez did sign an application for insurance, i.e. the Conditional Sales Contract, which indicated that insurance was desired by Mr. Martinez. See plaintiff's Exhibit "1". Also, it should be noted that the purchase of disability insurance from Great Equity is not

required in order to finance a car by means of sales contract. TR. pg. 50, lines 13-14.

WHEREFORE Great Equity respectfully requests that judgment be granted in its favor.

POINT II

SINCE THE JURY NEVER MADE A DETERMINATION AS TO WHETHER OR NOT MR. MARTINEZ RECEIVED A COPY OF THE INSURANCE POLICY, GREAT EQUITY IS ENTITLED TO A NEW TRAIL ON THAT ISSUE.

The Court's entire decision is based solely upon the single issue of whether Mr. Martinez received a copy of the insurance policy in question; yet the jury was never confronted with this issue. Great Equity asserts that if its case is allowed to stand or fall on this issue, then it is entitled to have the question put squarely to the jury. The Court relies on answer to Interrogatory No. 2 to support the assumption that Mr. Martinez did not receive a policy. However, Great Equity submits that it would not be inconsistent for the jury to find that Mr. Martinez did receive a copy of the policy and still answer the questions in the same manner. The jury could simply reason that, notwithstanding the receipt of the policy, Mr. Martinez, for any number of reasons ie. age, educational background etc., was not aware of the exclusion. Certainly the finding by

the jury that Mr. Martinez received a policy would not preclude it from also finding that he did not know, or should have known, about the pre-existing condition exclusion. Moreover, it should be noted that the jury was hung 3 to 5 on Interrogatory No. 2. The fact that the jury was hung on this critical question is alone sufficient to warrant a new trial.

Great Equity maintains that its burden of proof was sustained by Interrogatory No. 3, wherein the jury found that the pre-existing condition exclusion was standard in the industry such that a reasonably prudent person should have been aware of the provision. Although Mr. Martinez had not worked in the insurance industry, Great Equity submits that he, on a reasonably prudent person, should have been aware of the exclusion. Just as many recent flood victims have not worked in the insurance industry, they are, or should nevertheless be aware, that it is not possible to buy flood insurance after your house has been flooded. Therefore, Great Equity asserts that, in the interest of justice, at the very least, it should be granted a new trial on that issue.

CONCLUSION

On the basis of the arguments set forth above, Great Equity prays that this Court grant its Petition for Rehearing and grant Great Equity an opportunity to address, by way of argument, the points raised in this petition.

DATED this 27th day of June, 1983.

Respectfully submitted,

CHRISTENSEN, JENSEN & POWELL

By William J. Hansen

William J. Hansen




CERTIFICATE OF SERVICE

This is to certify that on this 27th day of June, 1983, a true and correct copy of the foregoing PETITION FOR REHEARING was mailed, postage prepaid, to:

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