

1983

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

Utah Supreme Court

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Mark S. Miner; Attorney for Defendants-Appellants;

Jay V. Barney; William J. Hansen; Attorneys for Respondents;

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IN THE SUPREME COURT OF THE STATE OF UTAH

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GENERAL MOTORS ACCEPTANCE  
CORPORATION, a New York  
corporation,

Plaintiff-Respondent,

vs.

HECTOR MARTINEZ and MANUEL M.  
RIVERA,

Defendants-Appellants,

Case No. 18072

vs.

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

Third-Party Defendants-  
Respondents.

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REPLY TO PETITION FOR REHEARING

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MARK S. MINER  
525 Newhouse Building  
10 Exchange Place  
Salt Lake City, Utah 84111  
Attorney for Defendants-Appellants

William J. Hansen  
900 Kearns Building  
Salt Lake City, Utah 84101  
Attorneys for Third-Party  
Defendants-Respondents

Jay V. Barney  
45 East Vine Street  
Murray, Utah 84107  
Attorney for Plaintiff-  
Respondent

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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GENERAL MOTORS ACCEPTANCE :  
CORPORATION, a New York :  
corporation, :  
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Plaintiff-Respondent, :  
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GREAT EQUITY LIFE INSURANCE :  
COMPANY OF CHICAGO, ILLINOIS: :  
STREATOR CHEVROLET COMPANY, INC.; :  
AL BARRUTIA; GRENT H. JENSEN; and :  
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REPLY TO PETITION FOR REHEARING

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MARK S. MINER  
525 Newhouse Building  
10 Exchange Place  
Salt Lake City, Utah 84111  
Attorney for Defendants-Appellants

William J. Hansen  
900 Kearns Building  
Salt Lake City, Utah 84101  
Attorneys for Third-Party  
Defendants-Respondents

Jay V. Barney  
45 East Vine Street  
Murray, Utah 84107  
Attorney for Plaintiff-  
Respondent

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UTAH STATUTES

Laws of Utah 1961, Chapter 67, Section 1, now found in Title 31, Chapter 34 of Utah Code Annotated, 1953 . . . . .	1
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Now Comes Hector Martinez and Manuel Rivera, defendants and appellants herein, pursuant to Rule 76(e)2 of the Utah Rules of Civil Procedure, and reply to the Petition for Rehearing filed herein as follows:

POINT I

IN 1961 THE LEGISLATURE ENACTED THE MODEL ACT FOR THE REGULATION OF CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE, LAWS OF UTAH 1961, CHAPTER 67, SECTION 1. ALL CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE SHALL BE EVIDENCED BY AN INDIVIDUAL POLICY, OR IN THE CASE OF A GROUP INSURANCE, BY A CERTIFICATE OF INSURANCE, WHICH SHALL BE DELIVERED TO DEBTOR.

That Act is now found in Title 31, Chapter 34, of the Utah Code Annotated, 1953, Section 31-34-6-1.

As clearly set forth in the Opinion on page 3: "This provision is necessary in the interest of fair dealing."

With this in mind, the Legislature deemed it mandatory that the insured be given a copy of the policy so that he can take whatever action is appropriate to protect his interests and be assured that the coverage which he thinks he has contracted, is actually provided for.

"It is not consonant with our statute for the insurance company to accept premiums and then deny liability on the grounds of an exclusion of which the insured was not aware because the insurance company had never informed him of the exclusion or given him means to ascertain its existence."  
(Opinion, page 3)

Rex Elton was a duly licensed general agent of Great Equity Life Insurance Company. He claimed to have great experience. He admitted that he typed the Conditional Sales Contract. He executed same and he obtained the signatures of Manuel Rivera, the father, and Hector Martinez, the son, thereon. (See Exhibit 1.) He further admitted that no signature was obtained on the application for insurance, nor was Hector Martinez ever informed of the exclusionary terms of the contract. (TR-157) The testimony of Rex Elton was as follows:

QUESTION: Do you recall dealing with Hector Martinez, the gentleman behind me?

ANSWER: No sir. (TR-150)

QUESTION: If I understand you right, you have no memory at all of waiting on Hector Martinez at all?

ANSWER: That's correct.

QUESTION: No memory of him being in your office?

ANSWER: No sir.

QUESTION: And if I understand your further, to the best recollection, no questions regarding health of any type or nature was asked Hector Martinez?

ANSWER: That's correct.

QUESTION: You did, evidently, handle the execution of Exhibit 1? (Conditional Sales Contract)

ANSWER: Yes sir. (TR-157)

QUESTION: Did you have Hector Martinez sign any type of application for insurance with Great Equity Company?

ANSWER: The only thing they signed was a Conditional Sales Contract. (TR-157)

It is undisputed that Great Equity Insurance accepted the good and sufficient premium, they led Hector Martinez to honestly believe he was fully and completely covered and, by doing so, by their failure to make a policy available to Hector Martinez, or to inform him of the contents thereof, as provided by Chapter 34, Utah Code Annotated, 1953, there was a deliberate, willful misleading on the part of the insurance company which caused Hector Martinez to reasonably believe that he was insured. Great Equity thereby induced him to act and to believe he was insured to his detriment. In fact, Rex Elton told Hector Martinez he was insured for disability. He accepted a large premium and it was not until nine months after the loss occurred that Great Equity saw fit to deny coverage under the policy. Hector Martinez was deprived of the right to purchase or obtain insurance elsewhere, and thereby be protected. Hector Martinez was denied this valuable right, and it was not until after the loss occurred that his coverage was denied.

It is this type of manifest injustice that the Legislature had in mind when it enacted the Model Act for

the Regulation of Credit Life Insurance and Credit Accident and Health Insurance. See Sections 31-34-1 through 31-34-15, Utah Code Annotated, 1953. The law applies equally to the insurance company and to the insured, and in order to apply the law equally, it is mandatory that the insured be given a copy of the policy so that he can take whatever action is appropriate to protect his interests and be assured that the coverage which he thinks he has contracted for is actually provided. (See Opinion, page 4.)

Whether a person is covered under a policy is determined by the mutual intention of both parties, and not the intention of one of them. The Legislature and this Court have long recognized that insurance contracts contain many provisions, often in fine print, the purpose of which is to limit the insurance company's obligations and to avoid risk which the insurance company would otherwise have to bear. The insured, on the other hand, is greatly handicapped as in this case, being a 19-year old, uneducated boy who was not informed, nor advised, nor given a copy of the policy or the application. On the other hand, the insurance agent, Rex Elton, well knew that the parties did not know or understand the policies. He made no attempt to explain it to them. It was well known to Rex Elton that he and the insurance company were in a superior position and, as such, the agent and Great Equity easily led Hector Martinez to believe that he was fully covered by disability insurance. He was there-

by prevented from obtaining other insurance and, under these facts and circumstances, to refuse enforcement of the policy would be unconscionable.

Great Equity Life Insurance Company states in their brief that Mr. Martinez did sign an application for insurance, i.e., a Conditional Sales Contract, which indicated that insurance was desired by Mr. Martinez. (See plaintiff's Exhibit 1.) With regard to this point, it is urged that the understanding of an ordinary person is the standard which must be used in construing a contract, and that such person, upon reading a Conditional Sales Contract, would reasonably believe that he would secure the benefit of immediate coverage by paying the premium in advance of the delivery of the policy. This is an obvious advantage to the company in obtaining payment of the premium when the Conditional Sales Contract is made. Under the circumstances, it would be unconscionable to permit a company, after using language to induce the payment of a premium, at that time to escape the obligation which an ordinary applicant would reasonably believe had been undertaken by the insurer.

#### POINT II

THE JURY FOUND BY A FIVE TO THREE VOTE IN FAVOR OF HECTOR MARTINEZ AND AGAINST GREAT EQUITY LIFE INSURANCE COMPANY.

The insurance company failed to sustain their proof in the following particular:

Interrogatory No. 2: Did Hector Martínez know or should he have known of the pre-existing physical condition exclusion referred to in question 1.

Yes 3

No 5

The jury, by this majority answer, found in favor of Hector Martinez and against Great Equity Life Insurance Company. The jury did, by a five to three vote, find that the policy of insurance was never delivered to Hector Martinez. By reason thereof, Hector Martinez did not know, and could not have known, of the pre-existing exclusion clause in the policy. The evidence conclusively shows that no policy was ever delivered. The jury, by a five to three vote, found in favor of Hector Martinez and against Great Equity Life Insurance Company to the effect that Hector Martinez did not know of any pre-existing physical exclusion clause in the policy. Great Equity Life Insurance Company and its general agent did, by their actions and conduct, take a legal position prejudicial to Hector Martinez to whom it had induced, by words and conduct, to act to his detriment. He was told that he was fully and completely insured. It was not until nine months after the loss occurred that the insurance company saw fit to deny the coverage on the grounds of voidable provision inserted in the policy for the benefit and protection of the insurance company, the existence of which was unknown to Hector Martinez. Martinez was grievously misled and imposed upon by the general agent

and Great Equity Life Insurance Company. The failure to deliver a policy of insurance to Hector Martinez or to explain to him the contents of the policy was tantamount to fraud or gross willful misconduct. Such conduct did create a great injustice to Hector Martinez.

Everyone, including insurance companies, is required to comply with the law. The insurance companies, of all people, are in a far better position than the common layman to know and understand the contents of the law and to see that the provision of the statutes are carried out. Title 34, Utah Code Annotated 1953, is clear. A COPY OF THE POLICY SHALL BE DELIVERED TO THE DEBTOR. The statute further provides that the policy or a certificate must contain the terms and coverage, including any exceptions, limitations and restrictions. It was so stated in the majority Opinion, the purpose of the statute is plain. The insured is entitled to be informed in writing of the essential terms of the insurance contract, particularly exclusionary terms. The Legislature and this Court have recognized that an insurance policy is a document containing a contract between the insured and the insurer. With this in mind, why does Great Equity Life Insurance Company claim that it is so unreasonable to require them to give a copy of the policy to the insured?

Rex Elton and Great Equity Life Insurance Company, by their acts and conduct in not issuing the policy or ex-

plaining its content, or in any way inquiring into the health of Hector Martinez, caused Hector Martinez and his father, Manuel Rivera, to voluntarily abandon the very valuable right of knowing the terms of the contract and, by their conduct and actions, did extinguish the rights and advantages of the insured.

Rex Elton testified that he was not interested in the health of Hector Martinez:

QUESTION: You never asked Hector Martinez if he had a pre-existing condition?

ANSWER: No sir.

QUESTION: He looked healthy to you, didn't he?

ANSWER: Yes sir.

QUESTION: And you were happy to insure him and take his money, isn't that true?

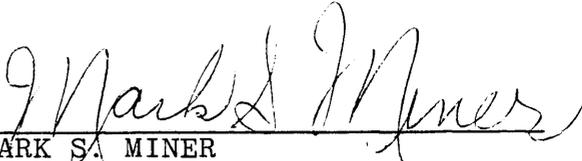
ANSWER: Yes sir.

(TR-160,161)

By this conduct the insurer and its agent did preclude Hector Martinez and his father from asserting the very valuable right to be insured, to their detriment and prejudice. It cannot be denied that Hector Martinez and his father, Manuel Rivera, had a definite right to rely on the conduct and actions of the general agent and the insurance company who had, in effect, misled them.

It is respectfully submitted that the Petition  
for Rehearing is without merit and should be denied.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of July, 1983.

  
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MARK S. MINER  
Attorney for Defendants and  
Appellants

CERTIFICATE OF MAILING

I hereby certify I mailed a true and correct copy  
of the foregoing Reply to Petition for Rehearing to:

Jay V. Barney, Esq.  
Attorney for Plaintiff-Respondent  
45 East Vine Street  
Murray, Utah 84107

William J. Hansen, Esq.  
Attorney for Third-Party Defendants-Respondents  
900 Kearns Building  
Salt Lake City, Utah 84101

and that said Reply to Petition for Rehearing was duly served  
according to law on this 11<sup>th</sup> day of July, 1983, postage prepaid.

  
MARK S. MINER