

1957

# Utah Farm Bureau Insurance Co. v. Rex K. Chugg et al : Brief of Respondent

Utah Supreme Court

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C. N. Ottosen; Attorney for Plaintiff and Respondent;

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**In the**  
**Supreme Court of the State of Utah**

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**UTAH FARM BUREAU INSURANCE  
COMPANY, a Utah Corporation.**  
Plaintiff and Respondent,

-vs-

**REX K. CHUGG,**  
Defendant and Appellant,  
**WILLARD A. LARSEN:** Insurance  
Commission of the State of Utah;  
**HAL S. BENNETT, DONALD  
HACKING and RUE L. CLEGG,**  
Commissioners of the Department  
of Business Regulation of the State  
of Utah and **WALTER M. JONES,**  
Commissioner of the Insurance  
Commission of the State of Utah,

**FILED**

**APR 2 1957**

Clerk, Supreme Court, Utah

**Appeal No.**  
**8621**

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**BRIEF OF RESPONDENT**

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**Attorney for Plaintiff**  
**and Respondent.**

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

UTAH FARM BUREAU INSURANCE  
COMPANY, a Utah Corporation,  
Plaintiff and Respondent,

-vs-

REX K. CHUGG,  
Defendant and Appellant,  
WILLARD A. LARSEN; Insurance  
Commission of the State of Utah;  
HAL S. BENNETT, DONALD  
HACKING AND RUE L. CLEGG,  
Commissioners of the Department  
of Business Regulation of the State  
of Utah and WALTER M. JONES,  
Commissioner of the Insurance  
Commission of the State of Utah,  
Defendants

Brief Of  
Respondent

Appeal No.  
8621

STATEMENT OF FACTS

The respondent hereby accepts the appellants statement of facts so far as stated, but the respondent desires to amend, correct and supplement said appellants statement of fact as follows:

The respondent recognizes that appellant, Rex K. Chugg, at the time of the automobile accident in question, was insured under an automobile insurance policy executed by the respondent and

properly deliver to appellant Chugg. The facts of this case further show that appellant Chugg was under the influence of alcohol while driving one of the automobiles in, and at the time of, the accident involved herein, and that driving while in that condition was contrary to, and in violation of the policy provision quoted on Page 2 of the appellant brief.

That the said policy form issued to the appellant Chugg was never filed for approval with the State Insurance Commissioner as required by law and was not in the form required by, nor did it comply with, the provisions and requirements of the Utah Safety Responsibility Law. It is also a fact in evidence that appellant Chugg, prior to the date of the accident herein involved, had never been called upon, by the Division of Safety and Financial Responsibility of the State Department of Public Safety, to show proof of financial responsibility as provided for and required under the provisions of the Utah Safety Responsibility Act, when certain circumstances exist and are present.

## STATEMENT OF POINTS

For purposes of answering the points raised by the appellant and to keep the arguments within those points, the respondent answers the appellants points under the following heads:

### POINT NUMBER I

THE LOWER COURT COMMITTED NO ERROR



BY ADMITTING TESTIMONY AS TO THE ALCOHOL CONTENT OF A BLOOD SPECIMEN TAKEN FROM THE APPELLENT.

Point Number 2.

THE LOWER COURT COMMITTED NO ERROR IN ADMITTING TESTIMONY OF AN ENTRY OF THE APPELLENTS PLEA OF GUILTY TO A CHARGE OF DRIVING WHILE INTOXICATED WHICH CHARGE WAS FILED AND ENTERED AGAINST THE APPELLENT IN THE LOGAN CITY COURT.

Point Number 3.

THE LOWER COURT COMMITTED NO ERROR IN HOLDING THERE WAS GOOD AND SUFFICIENT EVIDENCE THAT THE APPELLENT WAS INTOXICATED WHILE DRIVING THE AUTOMOBILE INVOLVED IN THE ACCIDENT.

Point Number 4.

THE LOWER COURT COMMITTED NO ERROR IN FAILING TO FIND THE RESPONDENT'S AUTOMOBILE POLICY OR ITS PROVISIONS, ESPECIALLY AS TO THE INTOXICATION CLAUSE INEFFECTIVE, INOPERATIVE OR OF NO EFFECT BECAUSE OF:

(a) THE POLICY HAVING NEVER BEEN APPROVED OR FILED FOR AP-

PROVAL WITH THE UTAH'S STATE INSURANCE COMMISSIONERS OFFICE.

(b) THE FORM OF THE POLICY BEING AT THE TIME OF THE AUTOMOBILE ACCIDENT CONTRARY TO THE FORM OF AUTOMOBILE INSURANCE POLICIES REQUIRED BY THE UTAH SAFETY RESPONSIBILITY ACT.

ARGUMENT

Point Number 1

Respondent submits that the law supports the introduction of the evidence under the circumstances herein involved. All parties concede that the accident occurred on August 27, 1955 at about 9:15 p.m. That defendant Chugg was taken immediately to the Logan L. D. S. Hospital that same evening. That a sample of Chugg's blood was taken that very evening at the Hospital (Tr. 26, 35) by Dr. Robert S. Budge, who first observed and treated the defendant Chugg at the scene of the accident and then had him removed to the hospital. Dr. Budge took the blood sample (Tr. 27 & 36). It was sent to the laboratory at the hospital where it was found that defendant's blood had an alcohol content by weight of zero point one seventy five (0.175) (Tr. 27). Dr. Budge extracted the blood sample for several reasons. One was because of his suspicion of drunkenness and because State Highway

patrolman Pitcher had ordered it. Also the doctor was concerned for purely medical reasons to determine if the patient's unconscious condition was due to alcohol or a blow on the head so as to be prepared to properly regulate further and later treatment. (Tr. 36) Respondent concedes that no specific consent was obtained for the blood sample but the evidence shows that at no time was objection ever raised even when the findings were used as evidence against defendant Chugg in the City Court on a charge of drunkenness. We submit this as an implied consent and a waiver. (Tr. 45).

Respondent submits that no better chain of proof could be forthcoming to establish the identity of the blood specimen and to connect it to the defendant at the time of the accident.

It should be noted by this court that even though the lower court refused to permit the evidence of the blood tests and the evidence of the plea of guilty to intoxication at the first hearing (Tr. 26, 27, 30), then later because of connecting evidence and a review of authorities, all this evidence was admitted and the courts prior rulings withdrawn (Tr. 47 & 48).

Your honorable court has just recently ruled on the matter of taking a blood sample without consent. It is in the case of Fretz vs Anderson 300 Pac. (2d) 642-6. The facts are not parallel, but if we interpret the courts decision correctly, there is no objection to the introduc-

tion of evidence of blood samples, even though no specific consent was given.

In the case of *State v. Cram* (Ore. 1945) 160 Pac. (2d) 283, we have a case parallel to our own case. The defendant was taken to the hospital, and while still unconscious, a blood sample was taken at the request of the police officer and for the doctor's use to determine further necessary treatment. Defendant was later charged with manslaughter and this evidence used against him but no objection was raised, no motion made for suppression of evidence or objection to the method of blood extraction. We also have that condition in the case before the court. We submit it is equivalent to consent. This case very thoroughly reviews the decisions, upholds the lower court in allowing the evidence, and held that no rights of the defendant had been violated.

In the case of *People v. Haeussler* (Cal. 1953) 260 Pac. (2d) 8, 12 we have another case of taking blood while the defendant was still unconscious, for the dual purpose of an alcohol test and to determine future treatment as the doctor in the case before the court testified he also did (T.36). The California court also held no rights violated and allowed the evidence to be admitted.

The following cases also support this rule:-  
*State v. Ayres* (Ida. 1949) 211 Pac. (2d) 142.  
*Block v. People* (Colo. 1951) 240 Pac. (2d) 512.

The fact that the present case is a civil case and not criminal makes no difference: See *Kuroske v. Aetna Life Insurance Company* (Wis. 1940) 291 N.W. 384, 25 A.L.R. (2d) 1415.

See Wigmore on evidence Vol. VIII, Sec. 2265 and especially the recent supplement material.

### Point Number 2.

Respondent submits that authorities are overwhelming in number, allowing evidence of a guilty plea in evidence under the circumstances of this case. Open pleas of guilty in a court are admissible in subsequent civil actions involving the same offence. (20 Am. Juris., Evidence, Sec. 648 p. 545). Courts are quite universal in their application of the rule that convictions after a trial on the evidence, are not admissible but pleas of guilty are admissible, and the tendency of courts is to be more liberal in this regard even with convictions after trial (18 A.L.R. (2d) 1289, 1290, 1307).

It would be multiplying words to say more but Respondent would like to add that one of the main reasons for this rule is that when such pleas are made under the restrictions and hazards of criminal prosecution, certainly the defendant should have no cause to complain under the lesser strain of civil actions. Then a defendant always has the privilege of explaining why he entered his plea. May we suggest the fol-

lowing cases as controlling:

Roper v. Scott (Ga. 1948) 48 S.E. (2) 118.

Morrissey v. Powell (Mass. 1939) 23 N.E. (2d) 411.

McClain v. Allstate Life Ins. Co. (Ohio 1948) 80 N.E. (2d) 815.

Koch v. Elkins (Ida. 1950) 225 Pac. (2d) 457.

Olsen v. Meachem (Cal. 1933) 19 Pac. (2d) 527.

People v. Oldsmobile Coupe (Cal. 1947) 181 Pac. (2d) 950-53.

Miller v. Blanton (Ark. 1948) 210 S.W. (2d) 293.

The appellant has cited certain Utah sections supplemented by a Minnesota case. (Pages 7&8 of appellant's Brief). Whatever logic or weight it might have, at best it is only a minority ruling. The respondent has in other ways shown the defendant's drunkenness so that the record of his plea is only supplementary but the respondent certainly is entitled to some way of showing intoxication when the defense is available in its policy and it is a legal defense. Further a plea of guilty is a confession and a statement against interest and should be given full weight as such. Respondent submits that where the very issue goes to the matter pleaded, evidence of that plea or confession could be admitted in line with the authorities cited by respondent.

## Point Number 3.

looking at the overall picture of the question of intoxication, where it is as here, the basic issue of the lawsuit, certainly the courts should allow the fact of intoxication to be proved by some means that is possible and reasonable within the realm of usual human relations. For the sheer convenience of the court, the respondent has tried, in this case, to supply that evidence from every available source. A bloodtest was taken, and it tested out at a figure which our law says is beyond a safe driving margin. Our law allows up to 0.15% of weight (Utah Code Annotated 1953 Sec. 41-6-44 (b)3) and there is no question or dispute that the appellant's blood tested 0.175% by weight. Respondent does not feel there is any question about the records supporting the fact that it was Chugg's blood that was tested on the night of the accident. We submit that the law supports the respondent in all phases of the results of that test being admissible as evidence. Respondent again submits that the defendant Chugg gave an implied consent to the blood test and waived his rights, if any he had, to object to the test in that neither he nor his counsel ever objected to the test, or asked for its return or suppression as evidence. Timely objectives must be raised to take advantage of cases of lack of consent.

The respondent produced the record of Chugg's own confession (Tr. 28-29) and this Chugg verified on the witness stand (Tr. 45) and took his opportunity to explain why he so plead.

Lastly the respondent put an officer on the stand who by the appellant's own brief admits was under the opinion defendant Chugg was intoxicated on the night of the accident. (Tr. 19 to 23, incl.). The law permits such opinions and the deputy sheriff gave several reasons to support his opinion.

IT SHOULD BE NOTED THERE IS NOT ONE WORD OF EVIDENCE TO REBUT THE RESPONDENT'S TESTIMONY EXCEPT DEFENDANT CHUGG' ATTEMPT TO EXPLAIN HIS PLEA OF GUILTY TO INTOXICATION.

#### Point Number 4.

Our state law does require that a form of all insurance policies must first be filed with the State Insurance Commission before that policy can be issued, delivered or used. (U. C. A. 1953 Sec. 31-19-9 (1). A copy of the policy involved in this case, and sold and delivered by the respondent to the defendant Chugg, was never filed with the Insurance Commissioner before the accident. But respondent submits that an unapproved policy, even though issued, delivered and used, remains enforceable in accordance with its terms, except for provisions prohibited by Statute



The Utah insurance code sets up no standards or restrictions on the form of an automobile insurance policy or on required or prohibited Provisions. (See U.C.A. 1953 Sec. 31-19-35). The appellant has referred, on page 10 of its Brief, to a restriction set out in Utah's Safety Responsibility Act which under certain circumstances becomes a restriction on automobile policy provision in this state, but may I refer to that below.

The respondent briefly contends the following for the problems raised in Point Number 4:

The Safety Responsibility Act of Utah is what is termed as a voluntary law. No one is forced to buy insurance, nor is anyone in any other way compelled to show evidence of financial responsibility, when they procure a drivers license. Proof of financial responsibility is not required until after the first serious accident. Therefore the policy provisions required by the Safety Responsibility Act(U.C.A. 1953 Sec, 41-12-21 (f) cannot be required in a policy until after the first serious accident. The Financial Responsibility Division of the Department of Public Safety have no control over this problem until the first accident. The State Insurance Commissioner is only required by law to enforce the insurance Code of the State (U.C.A. 1953 Sec. 31-2-1). As to Utah law which sets up the requirements of what is, and when to make, proof of financial responsibility, see

Secs. 41-12-1 (K), 3, 5a, 5b, 5c, 18, 19, 21, 21f (1), of the Utah Code Annotated 1953.

This is the system used by states under the voluntary system.

The respondent urges that in the cases that where a policy has been issued with provisions contrary to the Safety Responsibility Act BEFORE PROOF OF FINANCIAL RESPONSIBILITY HAS BEEN DEMANDED the policy sets up the contract between the insured and the insurer and they are bound by all its terms not contrary to law. As explained above there was no law prohibiting the respondent from inserting the Intoxication Exclusion Clause BEFORE Proof of Financial Responsibility was required of defendant Chugg. These policy provisions are also binding on third party claimants under the contract such as defendant Willard A. Larsen whose rights are no greater than the insured. Please note that it was stipulated between the parties that if witnesses were called, the testimony would be that defendant Chugg did not have his license suspended nor had he ever been called upon to show proof of financial responsibility prior to, or even after, the accident. (Line 28 of Page 5 to Line 30 of Page 6 of Supplemental Transcript Testimony taken November 21st, 1956). In support of these views the respondent submits the following:

Section 4297 in Vol. 7 of Insurance Law by Appleman reads as follows:

"Where the person insured was not one required to qualify under a Financial Responsibility Statute (underlining mine), even though a general form of endorsement is contained in the policy, it has been held that the rights of the third persons are no greater than those of the insured. Consequently the insurer has been permitted to set up a defense of lack of notice, failure to cooperate, (under exclusions, etc.) restrictions as to emergency use, like by an officer."

In the case of *McCann v. Continental Casualty Co.* (Ill. 1955) 128 N.E. (2d) 624, the insured had a policy covering only his family. This policy was in conflict with the provisions of the Financial Responsibility law which required a regular omnibus clause. This is a third party plaintiff attempting to force coverage under the terms of an omnibus provision. The court found that because of no prior accidents and never having been called upon to show proof of Financial Responsibility, the Financial Responsibility Act of Illinois was not applicable "unless the insured by his previous conduct had brought himself within its purview". (627) Illinois was under a voluntary and not a compulsory law as Utah.

This same rule is followed in the following case:

Farm Bureau Mutual Auto Insurance Co. v. Georgiana (N. J. 1951) 82 Atl. (2d) 217.

This of course is submitted by the respondent in support of its claim that the defendant Willard A. Larsen, would have no rights against the respondent under the policy, or any of its provisions, written on defendant Chugg by the respondent.

The cases just referred to show how the courts hold where a voluntary law as Utah's is in force, and its effect on the rights of the insured and third parties before proof of financial responsibility. It makes no difference that the policy had not been filed and approved with the Insurance Commissioner.

See:

Rogers v. Penn. Mutual Life (Pa. 194)  
26 Atl. (2d) 127, 129-30.

Herman v. Mutual Life Ins. Co. (Pa.  
1939) 108 Fed. (2d) 678, 682.

Hopkins v. Conn. Gen. Life Ins. Co.  
(N. Y. 1918) 121 N. E. 465.

Reddington v. Aetna Life Ins. Co. (N. Y.  
1942) 34 N. Y. Supp. (2d) 957-60.

The appellants have referred this honorable court to the compilation of cases in 1 A. L. R. (2d) 822 & 29 A. L. R. (2d) 811 as proof that the safety responsibility restrictions were effective against the policy herein involved before and at the time of the accident. A mere reading of the material in those citations shows they apply to

compulsory or mandatory laws and have no application to our Utah situation. All those cases are decided under laws where the safety responsibility provisions are applicable from the beginning rather than where Proof of Financial Responsibility must first be shown as in Utah.

See also - 34 A.L.R. (2d) 1293-98  
Farm Bureau Ins. Co. v. Martin (N.H.  
1951) 84 Atl. (2d) 823.

### CONCLUSIONS

The respondent urges that the lower court erred in neither of its decisions and that said respondent is entitled to request this court to uphold said lower court in the following:-

(a) That there was sufficient evidence to prove defendant Chugg was driving an automobile while under the influence of alcohol contrary to law, and the terms of his insurance policy with the respondent that all of the evidence pertaining thereto was properly admitted and the lower court committed no error.

(b) That the Utah Safety Responsibility Law is not a compulsory law so that before proof of financial responsibility is required of an insured he is not subject to the Financial Responsibility Laws;

and that therefore the provisions of any automobile insurance policy would be binding on the insured and any third party involved in an accident with the insured and that said third party would get no further rights than the insured; and that further, the Insurance Commissioner of this state does not have to enforce the Safety Responsibility laws and that the mere fact that the automobile insurance policy form herein involved was not filed and approved by the respondent does not effect the issues herein.

(c) And that more specifically, that defendant Chugg was intoxicated, which made his automobile policy unenforceable; that because our Utah Safety Responsibility Law is Voluntary and not Compulsory in operation, that law was not operative against defendant Chugg at the time of the accident; that therefore the third party Willard A. Larsen has no further rights in, to, or as a result of the terms and conditions of said policy than those enforceable by defendant Chugg; that the policy issued and delivered to defendant Chugg by the respondent violated no provision of the Utah Insurance Code and that all other findings and orders of the lower court in its findings, conclusions and decree be upheld by this honorable court.

Respectfully submitted,

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