

1982

Carol Hoffman v. Life Insurance Co. of North America : Reply Brief of Appellant

Utah Supreme Court

Follow this and additional works at: 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.

M. David Eckersley; Attorney for Plaintiff;

H. James Clegg; Attorney for Respondent;

Recommended Citation

Reply Brief, *Hoffman v. Life Insurance Co. of North America*, No. 18184 (Utah Supreme Court, 1982).

https://digitalcommons.law.byu.edu/uofu_sc2/2848

This Reply Brief 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.

IN THE SUPREME COURT
OF THE STATE OF UTAH

CAROL HOFFMAN, :
 :
 Plaintiff and Appellant, :
 :
 vs. : Supreme Court No. 18184
 :
 LIFE INSURANCE COMPANY OF :
 NORTH AMERICA, :
 :
 Defendant and Respondent.:

REPLY BRIEF OF APPELLANT

FILED

JUL 21 1982

Clerk, Supreme Court, Utah

M. David Eckersley
HOUP & ECKERSLEY
510 Judge Building
8 East Broadway
Salt Lake City, Utah 84111
Attorney for Plaintiff

H. James Clegg
Henry K. Chai, II
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Post Office Box 3000
Salt Lake City, Utah 84110
Attorneys for Defendant

IN THE SUPREME COURT
OF THE STATE OF UTAH

CAROL HOFFMAN, :
 :
Plaintiff and Appellant, :
 :
vs. : Supreme Court No. 18184
 :
LIFE INSURANCE COMPANY OF :
NORTH AMERICA, :
 :
Defendant and Respondent.:

REPLY BRIEF OF APPELLANT

M. David Eckersley
HOIPT & ECKERSLEY
510 Judge Building
8 East Broadway
Salt Lake City, Utah 84111
Attorney for Plaintiff

H. James Clegg
Henry K. Chai, II
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Post Office Box 3000
Salt Lake City, Utah 84110
Attorneys for Defendant

CASES CITED

Page

<u>American Cas. Co. v. Eagle Star Ins. Co., Ltd.,</u> 568 P.2d 731 (1977)	4
<u>Carlyle v. Equity Benefit Life Ins. Co.,</u> 551 P.2d 663 (Okla. App. 1976)	3
<u>Kellogg v. California Western Life Ins. Co.,</u> 201 P.2d 949, 952 (Utah 1949)	5
<u>Mohn v. American Cas. Co.,</u> 458 Pa. 576, 326 A.2d 346 (1974)	3
<u>Wetzel v. Westinghouse Electric Corp.,</u> 393 A.2d 470 (Pa. 1978)	3

he saw Mr. Hoffman, within a week of his death, he "felt very strongly that I needed to get him into the hospital" due to his mental illness which "was really a psychiatric malignancy." (R. 121) He testified that he made special arrangements to meet with Mr. Hoffman because

As ill as the man was, my goal all the time was to get his confidence and you know - you can't predict when you're going to say something or something will happen for just a moment, he would consider going into the hospital; and if that moment did occur I wanted to be available to him. (R. 123)

Dr. Mohr diagnosed acute high paranoia, which "is a delusional state really of an inflammatory nature. . . ." (R. 124). When defense counsel asked if Mr. Hoffman was a classic high paranoid, the Doctor said, "Yes, in the acute, these things just pop out -- just almost run rampant. That's the way he was" (R. 125). Finally, in response to the specific question from defense counsel as to whether Dr. Mohr felt Mr. Hoffman was mentally ill on the date of his death, Dr. Mohr indicated that he "considered him suicidal, homicidal and a very sick man." (R. 126)

In the face of this uncontradicted testimony, there can be no question what finding would have been mandated had the defendant chosen to address that issue in the findings of fact submitted. However, that issue was not addressed because of the defendant's oft repeated contention that Mr. Hoffman's insanity was irrelevant to the legal conclusion regarding whether or not his death was accidental within the meaning of the insurance policy in question. The defendant has repeatedly argued that such a determination must be

made on an "objective" basis, without regard to the mental condition of the insured. This assertion is, however, without any support in the case law dealing with mentally ill victims of intentional acts of others. The only authority cited by defendant in support of disregarding the mental illness of the insured is Carlyle v. Equity Benefit Life Ins. Co., 551 P.2d 663 (Okla. App. 1976), which case did not concern a mentally impaired insured or raise that issue in any manner and where the Court expressly conditions its holding upon the privilege so that in making determinations about accidents the Court doesn't

attempt to state any hard-and-fast rules to be applied in making such a determination. Each decision . . . must depend upon an analysis of the particular facts and circumstances.

551 P.2d at 667. In the instant case, where the facts show conclusively that the insured was fatally injured at a time when he was suffering from an acute mental impairment, there is no justification for applying the "objective" standard which other courts considering the issue have uniformly rejected.

While the defendant insists that determining what constitutes an accident on the basis of subjective factors would constitute a judicial revision of the policy in question, it can't be denied that interpretation of contracts is a proper judicial function and the Supreme Court of the State from which the policy was issued has previously found that the policy in question provides coverage in this situation. See Mohn v. American Cas. Co., 458 Pa. 576, 326 A.2d 346 (1974); Wetzel v. Westinghouse Electric Corp., 393 A.2d 470 (Pa. 1978).

The facts of this case present an unusual question concerning the responsibility of a mentally impaired insured for the consequences of his actions which might, in a normal individual, be deemed probable and foreseeable. Where, as in the instant case, the insured lacks the capacity to anticipate the probable consequences of his actions, the usual definition of accident becomes ambiguous. This Court has noted that in cases of ambiguity in insurance contracts any doubt should be resolved in favor of coverage. See American Cas. Co. v. Eagle Star Ins. Co., Ltd., 568 P.2d 731 (1977). Application of this simple principle mandates the conclusion, consistent with those reached in every reported case presenting the issue, that an insane insured who suffers injuries intentionally inflicted by another has suffered accidental injury as that term is used in insurance policies.

CONCLUSION

While the trial court did not feel it necessary to make a finding on the question, the undisputed evidence demonstrates that Louis Hoffman was suffering from serious mental illness when he was shot and killed by Salt Lake City Police Officers. Because this insanity prevented Mr. Hoffman from making rational judgments about the probable consequences of his conduct, his resultant injury and death was accidental within the meaning of that term when used in a policy of insurance. In so holding, this Court would not be creating a new definition of accident, but merely recognizing that the peculiar facts of this case mandate a different result than might otherwise be reached if Mr. Hoffman had acted without the encumbrance of severe mental illness. As this Court has previously noted:

Each individual may be considered the average individual unless the facts disclose that in reality he is not; and when the facts do so show, then the question of the accidental nature of the result must be measured by this knowledge.

Kellogg v. California Western Life Ins. Co., 201 P.2d 949, 952
(Utah 1949).

DATED this 20th day of July, 1982.


M. DAVID ECKERSLEY
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing Reply Brief of Appellant were mailed this _____ day of July, 1982, postage prepaid to the following:

H. James Clegg
Henry K. Chai, II
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Post Office Box 3000
Salt Lake City, Utah 84110