1982

Carol Hoffman v. Life Insurance Co. of North America : Appellant's Citation of Newly Uncovered Authority

Utah Supreme Court

M. David Eckersley; Attorney for Plaintiff;
H. James Clegg; Attorney for Respondent;

M. David Eckersley
Attorney for Defendant
HOUPT & ECKERSLEY
510 Judge Building
Salt Lake City, UT 84111
Telephone: (801) 532-0453

IN THE SUPREME COURT

OF THE STATE OF UTAH

CAROL HOFFMAN, Plaintiff and Appellant, vs. LIFE INSURANCE COMPANY OF NORTH AMERICA, Defendant and Respondent.	APPELLANT'S CITATION OF NEWLY UNCOVERED AUTHORITY Case No. 18184

Plaintiff and appellant Carol Hoffman hereby requests the Clerk of the Court, pursuant to Rule 75(p)(3) of the Utah Rules of Civil Procedure, to include in appellant's brief, at page 18, line 11, the following argument and authorities newly uncovered by appellant's counsel, said authorities being in support of Point II of appellant's original brief:

On the analogous question of how an insured's mental impairment should be applied with regard to a policy provision excluding coverage for injuries caused by the insured's own intentional conduct, courts have now almost uniformly adopted the rule that an intentional conduct exclusion cannot be used to deny coverage to a mentally impaired insured. For instance, in Globe American Cas. Co. v. Lyons, 131 Ariz. 337, 641 P.2d

251 (Ariz. Appl. 1982), the court was presented with a case where the insured drove her vehicle directly into a pickup truck occupied by others. When the occupants filed suit against the insured, the company sought a declaration that they had no coverage for the risk because the accident was the product of the insured's intentional conduct for which an exclusion existed. Despite psychiatric testimony showing the insured to have been suffering from severe mental illness at the time of the accident, the trial court entered judgement for the company on the basis of the intentional conduct exclusion. The Court of Appeals reversed, noting that "to hold, as appellees urge, that mental illness is irrelevant for purposes of determining whether an act is "intentional" is inconsistent with long standing policy considerations in insurance law." 641 P.2d at 253. Instead, the court chose to adopt the holding of the New Jersey Supreme Court in Ruvolo v. American Cas. Co., 39 N.J. 490, 189 A.2d 204 (1963), as follows:

> We hold that if the insured was suffering from a derangement of his intellect which deprived him of the capacity to govern his conduct in accordance with reason and while in that condition [acted] on an irrational impulse. . . his act cannot be treated as "intentional" within the connotation of defendant's insurance contract.

189 A.2d at 208-09. See also, Congregation of Rodef Shalom of Marin v. American Motorists Ins. Co., 91 Cal. App. 3d 690, 154 Cal. Rptr. 348 (1979); Arkwright-Boston Mfrs. Mut. Ins. Co. v. Dunkel 363 So.2d 190 (Fla. 1978).

Appellant submits that the same policy considerations which would preclude application of an intentional conduct exclusion to a mentally impaired insured militate against holding

a mentally impaired insured responsible for the "foreseeable" consequences of his actions.

DATED this 29th day of December, 1982.

M. David Eckersley
M. David Eckersley
Attorney for Appellant

MAILING CERTIFICATE

I certify that a correct and true copy of the foregoing was sent to the following this 29th day of December, 1982.

H. James Clegg
Henry K. Chai II
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Fourth Floor
P.O. Box 3000
Salt Lake City, UT 84110

Colleen O'Brien
HOUPT & ECKERSLEY