

2011

Basic Research, LLC v. Admiral Insurance Co : Appellee's Response to Appellant's Rule 24 Letter Providing Supplemental Authority

Utah Court of Appeals

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July 20, 2012

Clerk of the Court
UTAH SUPREME COURT
450 South State, 5th Floor
Salt Lake City, Utah 84114-0210

Re: *Basic Research, LLC et al. v. Admiral Insurance Company*
Utah Supreme Court, Appeal No. 20110556-SC

**APPELLEE'S RESPONSE TO APPELLANT'S RULE 24(j) LETTER PROVIDING
SUPPLMENTAL AUTHORITY, DATED JULY 10, 2012, RE: *Tower Ins. Co. of
New York v. Capurro Enter. Inc.*, 2012 WL 1109998 (N.D. Cal. April 2, 2012)**

To Whom It May Concern,

Appellee Admiral Insurance Company ("Admiral") respectfully submits the following response to Appellant Basic Research, LLC's Rule 24(j) Letter, dated July 10, 2012, because Appellant's Letter, informing the Court of the decision in *Tower Ins. Co. of New York v. Capurro Enter. Inc.*, 2012 WL 1109998 (N.D. Cal. April 2, 2012), exceeds the bounds of Rule 24(j) by making an argument in relation to the *Capurro* decision. In response, Admiral respectfully requests the Court to consider its ruling in *S.W. Energy Corp. v. Continental Ins. Co.*, 1999 UT 23, ¶ 13, 974 P.2d 1239; and specifically review its explanation of contract interpretation in the context of insurance policy exclusions:

If a policy is not ambiguous, however, no presumption in favor of coverage arises; rather, the policy language is construed pursuant to its ordinary meaning. . . . **This rule, contrary to S.W. Energy's assertion, applies with equal force to policy provisions excepting certain losses from coverage.** . . . Coverage exclusions are not construed automatically against the insurer, rather, such a construction only applies when, as for any other policy provision,

the language of the exclusion is ambiguous.

Id. at ¶ 13 (citations omitted) (emphasis added). *See also Alf v. State Farm Fire & Casualty Ins. Co.*, 850 P.2d 1272, 1275 (Utah 1993) (“An insurer may exclude from coverage certain losses by using language which clear and unmistakably communicates to the insured the specific circumstances under which the expected coverage will not be provided.”). Appellant’s reliance upon the *Capurro* decision and its position that the “arising out of” language found in Exclusion g. should be construed more narrowly than if such language were found in an insuring provision is inconsistent with this Court’s ruling in *S.W. Energy* and *Alf*.

Sincerely,

CHRISTENSEN & JENSEN, P.C.

A handwritten signature in cursive script that reads "Rebecca L. Hill".

Phillip S. Ferguson

Rebecca L. Hill

CERTIFICATE OF SERVICE

Pursuant to Rule 22 of the Utah Rules of Appellate Procedure, I hereby certify that on this 20th day of July, 2012, I mailed a true and correct copy of the foregoing **APPELLEE'S RESPONSE TO APPELLANT'S RULE 24(j) LETTER OF SUPPLEMENTAL AUTHORITIES**, postage prepaid, to the following:

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