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The Ohio Casualty Insurance Company v. Barbara Brundage et al : Brief of Appellant

Utah Supreme Court

L. Rich Humpherys; Attorney for Defendant-Appellant;
Taylor D. Carr; Ray H. Ivie; Attorneys for Plaintiff-Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

THE OHIO CASUALTY INSURANCE COMPANY, Plaintiff-Respondent, vs. BARBARA BRUNDAGE, RAY H. IVIE and J. RULON MORGAN, Defendants-Respondents, ALLSTATE INSURANCE COMPANY, Defendant-Appellant.	)	Case No. 18288

BRIEF OF APPELLANT

APPEAL FROM THE ORDER OF THE FOURTH JUDICIAL DISTRICT COURT,
THE HONORABLE GEORGE E. BALLIF PRESIDING

L. RICH HUMPHERYS
900 Kearns Building
Salt Lake City, Utah 84101

Attorney for Defendant-Appellant
Allstate Insurance Company

TAYLOR D. CARR
225 South Second East, Suite 200
Salt Lake City, Utah 84111

Attorney for Plaintiff-Respondent

RAY H. IVIE
48 North University Avenue
P.O. Box 672
Provo, Utah 84603

Attorney for Defendant-Respondent
Barbara Brundage

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RAY H. IVIE
48 North University Avenue
P.O. Box 672
Provo, Utah 84603

Attorney for Defendant-Respondent
Barbara Brundage

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STATEMENT OF THE CASE

This is a subrogation action by Plaintiff-Respondent Ohio Casualty Insurance Company, against Appellant Allstate Insurance Company, Respondents Barbara Brundage, and her attorneys Ray H. Ivie and J. Rulon Morgan, to recover the amount of no-fault personal injury protection benefits paid by Ohio Casualty to its insured Respondent Brundage.

DISPOSITION IN LOWER COURT

In response to motions for summary judgment by all parties, the court held as follows:

(1) Respondents Barbara Brundage, Ray H. Ivie and J. Rulon Morgan are not liable to reimburse Respondent Ohio Casualty for the no-fault personal injury protection (PIP) benefits paid by Ohio Casualty to Respondent Brundage, even though said

Respondents admittedly received double reimbursement for said special damages: First by the payment of the PIP benefits and second by the payment of a judgment which was not reduced by the PIP payments received by Brundage.

(2) Even though Appellant Allstate (the liability carrier) had paid the full amount of the judgment (unreduced by the amount of PIP payments), Allstate must arbitrate Ohio Casualty's claim and is not entitled to any equitable reimbursement from Respondents Brundage and her attorneys, and Allstate's cross-claim against Respondents Brundage and her attorneys was dismissed.

(3) Appellant Allstate is not entitled to declaratory relief concerning the liabilities and rights of the parties herein.

(4) Over 1-1/2 years after the trial court dismissed Appellant Allstate from this action, the trial court set aside said dismissal pursuant to Rule 60(b)(7), Utah Rules of Civil Procedure.

RELIEF SOUGHT ON APPEAL

Appellant Allstate (liability carrier) seeks declaratory relief that, since it has paid Respondents Brundage (injured party) and her attorneys Ivie and Morgan, the full amount of the judgment in the personal injury action, which judgment was not reduced by the amount of PIP payments to Brundage, Appellant Allstate is not liable to Respondent Ohio Casualty (the no-fault carrier); and that Brundage is liable to Ohio Casualty to the

extent of double recovery, minus attorney's fees and costs. In the alternative, Appellant Allstate is entitled to equitable reimbursement from Brundage, to the extent of double recovery. With this ruling, Appellant seeks to reverse the trial court's dismissal of Ohio Casualty's complaint and Allstate's cross-claim against Respondants Brundage, Ivie and Morgan, and summary judgment should be granted in favor of Appellant.

Appellant further seeks reversal of the court's order setting aside the dismissal of Ohio Casualty's complaint against Allstate, pursuant to Rule 60(b)(7), Utah Rules of Civil Procedure, which occurred more than 1-1/2 years after the dismissal.

STATEMENT OF THE FACTS

This case concerns the recovery of no-fault PIP benefits paid by Respondent Ohio Casualty to its insured Respondent Brundage for injuries she sustained in an automobile accident. Most of the facts in this case were created before this Court decided Allstate v. Ivie, 606 P.2d 1197 (Utah 1980), and the Court's directions contained therein were therefore not followed; thereby creating a difficult set of circumstances for the trial court to apply the Ivie case. The relevant facts are as follows:

Respondent Ohio Casualty is the no-fault insurer of Respondent Brundage, who was involved in an automobile accident with tort-feasor Jacqueline L. Kernan on May 7, 1976. (R. 29-32, 41-42) Respondent Brundage sustained personal injuries therefrom and received no-fault PIP benefits from Ohio Casualty in the

amount of $8,313.80. (R. 17-18, 29-32, 41-42)

Respondent Brundage then filed a personal injury action against Kernan in the Fourth Judicial District, Utah County, State of Utah, Civil No. 44997. (Id.) Said personal injury action was tried in September, 1977, resulting in a finding by a jury that Brundage had sustained damages in the total amount of $27,000.00 (general damages of $18,771.16; special damages of $8,228.84). (R. 20, 202) All of the parties herein admit that the special damages of $8,228.84 awarded by the jury are the same damages for which Brundage was previously compensated through the PIP payment. (R. 17-18, 29-32, 41-42)

The court did not reduce the judgment by the amount of the PIP payments received by Brundage; however, the court did reduce the judgment to $21,600.00 because the jury found that Brundage was comparatively negligent in the amount of 20%. (R. 22, 202) In the Judgment On The Verdict, the court ordered, "Defendant [Kernan] is hereby ordered to make payment directly to plaintiff Barbara A. Brundage and her attorneys J. Rulon Morgan and Ray H. Ivie." (Id.) Thereafter, Appellant Allstate, the liability carrier for Kernan, paid the $21,600.00 directly to Brundage and her attorneys pursuant to said order. (R. 29-32, 41-42)

Respondent Ohio Casualty made demand upon Allstate for reimbursement of the PIP payments to Brundage. (R. 118) Allstate denied said claim for reimbursement on the grounds that it had fully paid the judgment, which included the amount for the

reimbursement of the PIP payments. (R. 161-162) Ohio Casualty then commenced this action against Brundage, seeking reimbursement of said PIP payments, upon the grounds that Brundage received payment of the judgment in full, which constituted double recovery. (R. 5) Ohio Casualty thereafter amended its complaint in July 1978, and brought an alternative claim against Allstate. (R. 13) Ohio Casualty again amended its complaint to name Brundage's attorneys, Ivie and Morgan, upon the grounds that the court in the personal injury action ordered the payment of the judgment to both Brundage and her attorneys. (R. 29)

Ohio Casualty also commenced arbitration proceedings on October 21, 1977. (R. 139) The chairman of the arbitration committee responded to Ohio Casualty that the committee could not proceed with arbitration as long as the same matter was being litigated in the courts. (R. 149, 152)

Shortly after Ohio Casualty filed its First Amended Complaint, Appellant Allstate made a motion for summary judgment on the grounds that Allstate had fully paid the judgment in the personal injury action and was therefore not liable to reimburse Ohio Casualty for said PIP payments. (R. 35) The trial court granted said motion in April 1979, and dismissed Allstate from the case. (R. 39-40) In May 1980, Respondent Ohio Casualty made a motion for relief from said judgment of dismissal, pursuant to Rule 60(b)(7), Utah Rules of Civil Procedure, and moved the court in the alternative, for summary judgment against Brundage, Ivie and Morgan. (R. 80) Ohio Casualty based its motion for relief

on the fact that this Court had subsequently decided the case of Allstate v. Ivie, supra, wherein this Court declared that by arbitration the no-fault carrier should seek reimbursement from the liability carrier for its PIP payments. In the alternative, Ohio Casualty argued that it was entitled to judgment against Brundage and her attorneys, who received the double recovery. (The author herein did not represent Allstate until June 30, 1980; R. 44.)

In December 1980, the trial court granted Ohio Casualty's motion for relief and vacated the order dismissing Allstate. It also denied Ohio Casualty's motion for summary judgment against Brundage, Ivie and Morgan and dismissed the complaint as to them. (R. 99-102, 104) Allstate timely filed its Notice of Intent to Appeal. (R. 103) Allstate then filed a cross-claim against Brundage, Ivie and Morgan claiming that if Allstate is required to reimburse Ohio Casualty, Brundage and her attorneys should indemnify Allstate. In addition, since Ohio Casualty was seeking an order requiring Allstate to arbitrate, Allstate also prayed for declaratory relief that Allstate was not liable to Ohio Casualty, and requested the court to declare the rights and obligations of the parties. (R. 120-122) As a part of Allstate's prayer for declaratory relief, Allstate moved to consolidate the present action with the personal injury action, which motion was denied. (R. 124, 192, 193)

Ohio Casualty thereafter made a motion for summary judgment which the court granted and ordered Allstate to

arbitrate the claim. (R. 185, 203-204) Allstate simultaneously made motion for summary judgment against Brundage, Ivie and Morgan and sought declaratory judgment, since all of the relevant facts were admitted by the parties. (R. 194) The court denied Allstate's motion for summary judgment and dismissed Allstate's cross-claim against Brundage, Ivie and Morgan. In addition, the trial court refused to grant declaratory judgment. (R. 210-213)

In summary, the positions of the respective parties on the merits are as follows:

Ohio Casualty's position is that it paid the amount of $8,313.80 in no-fault PIP benefits to Brundage and it is therefore entitled to be reimbursed from either Brundage and her attorneys, or Allstate, for the amount of $6,651.04 (80% of $8,313.80).

The position of Brundage, Ivie and Morgan is that even though Brundage received $8,313.80 from Ohio Casualty, and in addition, the amount of $6,583.08 from Allstate by reason of the personal injury judgment (which admittedly constituted double recovery), the Ivie case protects Brundage and her attorneys from any subrogation claim by Ohio Casualty, and Brundage and her attorneys are therefore entitled to the windfall.

Allstate's position is that since it had paid the full amount of the judgment in the personal injury action to Brundage and her attorneys, pursuant to the court's order, it is not liable to Ohio Casualty, since such would constitute double liability for Allstate; double recovery for Brundage; and double

recovery for Ohio Casualty. In any event, the maximum amount of Ohio Casualty's claim is only 80% of $8,228.84 (the amount of special damages found by the jury), not 80% of $8,313.80 (the total amount of PIP payments).

ARGUMENT

POINT I

APPELLANT ALLSTATE IS ENTITLED TO DECLARATORY RELIEF THAT RESPONDENTS BRUNDAGE AND HER ATTORNEYS ARE LIABLE FOR OHIO CASUALTY'S PIP REIMBURSEMENT CLAIM AND THAT APPELLANT ALLSTATE IS NOT LIABLE TO OHIO CASUALTY IN ANY EVENT

In its cross-claim Appellant Allstate sought declaratory relief that it was not obligated to pay Ohio Casualty's PIP reimbursement claim and that Brundage and her attorneys must pay the claim. Allstate is entitled to declaratory relief on these issues pursuant to Section 78-33-1, et seq., Utah Code Ann. (1953), as amended, and Rule 57, Utah Rules of Civil Procedure.

The trial court denied Allstate's request for declaratory relief and ordered that Allstate arbitrate the claim. If there is a legal issue to be decided, the court stated that the issue should be submitted to the court pursuant to Section 78-31-13, which states:

> The arbitrators may on their own motion, and shall by request of a party to the arbitration:
>
> (1) At any stage of the proceedings submit any question of law arising in the course of the hearing for the opinion of the court, stating the facts upon which the question arises, and such opinion when given shall bind the arbitrators in the making of their award.

The error in the court's ruling is that Brundage and

her attorneys are interested parties whose rights and obligations are inseparably connected with the issues herein. Brundage and her attorneys would not be parties to the arbitration, nor would any arbitration decree be res judicata as to them. Therefore, the only remedy available to the parties is through the district court in a declaratory judgment action. Once the court has given its declaratory judgment, the matter may then be fully arbitrated, if necessary.

Allstate's request for declaratory relief is consistent with the legislative intent, as codified in Section 78-32-12, Utah Code Ann., as amended, which states:

> This Chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

The trial court has adjudicated that Brundage and her attorneys are not liable to Ohio Casualty or Allstate. In order to reverse the trial court, it is necessary for this Court to declare the rights and responsibility of all the parties herein.

A. RESPONDENTS BRUNDAGE, IVIE AND MORGAN ARE RESPONSIBLE TO PAY OHIO CASUALTY'S PIP REIMBURSEMENT CLAIM.

Prior to Allstate v. Ivie, the reimbursement of PIP benefits paid to the injured party caused continual problems because almost every settlement and judgment in a personal injury action included the PIP reimbursement claim, resulting in additional litigation, expenses and attorney's fees, which are counterproductive to the purpose of the Utah No-Fault Act, Section 31-41-2, Utah Code Ann. (1953), as amended. This Court

resolved these problems by holding in the Ivie case that: (1) the injured party has no interest in the PIP carrier's claim for reimbursement; (2) the injured party cannot recover from the tort-feasor for his damages compensated by the PIP payments; (3) the no-fault carrier's claim for reimbursement must be determined by arbitration.

Because the personal injury judgment herein was entered before the Ivie decision, the above guidelines were not adhered to. Though Ivie states that the no-fault carrier has no subrogation right against its own insured, this holding must be interpreted in light of the facts of the Ivie case and the subsequent related cases. In Ivie the injured party contested the fact that the settlement included reimbursement for the PIP payments, and expressly denied the same. There was never an agreement or an adjudication that the settlement fully compensated Mrs. Ivie, thereby resulting in double recovery to her.

The Ivie case does not stand for the proposition that under all circumstances the no-fault carrier cannot subrogate against its own insured. It stands only for the proposition that where there is a pre-trial settlement, and said settlement does not explicitly include an amount for the PIP payments, the no-fault carrier cannot subrogate against its insured. However, where the settlement clearly includes the PIP payments, thus resulting in double recovery to the injured party, then subrogation is permitted (minus attorney's fees and costs). This was the express holding of the cases which followed Ivie: Guaranty

National Insurance Co. v. Morris, 611 P.2d 725 (Utah 1980) and Street v. Farmers, 609 P.2d 1343 (Utah 1980).

This equitable principle was stated int he case of Dupuis v. Neilson, infra. When referring to the cases of Street v. Farmers Insurance Exchange, supra; Allstate v. Ivie, supra; and Jones v. Transamerica Insurance Co., 592 P.2d 609 (Utah 1979), this Court stated: "These cases are predicated upon the proposition that a basic principle of the No-Fault Act is to prevent double recovery by the no-fault insured." 624 P.2d at 686.

This point was also made clear by Chief Justice Crockett in his concurring opinion in the case of Allstate v. Anderson, 608 P.2d 235 (Utah 1980), when he stated:

> If it appears that the wrongdoer "is or would be legally liable" to the claimant, then the wrongdoer's insurer must reimburse the claimant's insurer for its PIP payments it has made, this to be done under the procedure provided in Section 31-41-11, U.C.A. 1953 [arbitration]; and this PIP payment is not to be considered as part of any settlement between the claimant and the wrongdoer or his insurer. (Unless the parties clearly understand and agree otherwise.). . . . This, in order to prevent double recovery, and double payment for the same loss. (Emphasis added)

To prevent double liability on the part of a liability carrier, this Court stated in Ivie that the trial court should appropriately reduce the judgment by the amount of the PIP payments. See also, Dupuis v. Nielson, 624 P.2d 685, 687 (Utah 1981).

The only logical conclusion from these cases, when

jointly considered, is that if a personal injury action results in a judgment fully paid by the liability carrier, and it is clear that the judgment includes an amount for damages previously compensated by PIP payments, then the no-fault carrier should be reimbursed by its insured, minus attorney's fees and costs.

In the present case, there is no dispute that the judgment in the personal injury action did include damages for which Brundage previously received compensation through PIP payments. To prevent double payment of the same loss by Allstate, and to prevent double recovery on the part of Brundage, Brundage should be liable to Ohio Casualty for its PIP reimbursement claim, minus reasonable attorney's fees and costs.

B. IN ANY EVENT, ALLSTATE IS NOT LIABLE TO OHIO CASUALTY FOR ANY AMOUNT OF SAID PIP REIMBURSEMENT CLAIM.

Any right of recovery that Ohio Casualty may have against Allstate is founded upon Section 31-41-11, Utah Code Ann., as amended, 1953, which states:

> (a) that where its [liability carrier's] insured is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under this act have been paid by another insurer, including the State Insurance Fund, it will reimburse such other insurer for the payment of such benefits, but not in excess of the amount of damages so recoverable. (Emphasis added)

Allstate, the liability carrier, is therefore responsible to reimburse Ohio Casualty to the extent that Allstate's insured "is held legally liable for the personal injury . . . but not in excess of the amount of damages so recoverable." Since

Allstate has paid the full amount of the recoverable damages to Brundage, pursuant to court order, Ohio Casualty is not entitled to any recovery, because such would be "in excess of the amount of damages so recoverable," which the statute expressly forbids.

The basic objectives and equitable principles of law upon which subrogation is founded are as follows:

1. A party is not entitled to double recovery for the same loss.

2. If there is double recovery, the insurer is entitled to be reimbursed for its payments to its insured, to the extent of double recovery.

3. The tort-feasor and his liability carrier are not obligated to pay both the injured party and his insurance company for the same loss, which would constitute double liability.

If the dismissal of Brundage and her attorneys is upheld and if Allstate is required to pay Ohio Casualty's claim, there will be three injustices that run contrary to the above basic principles of law and equity:

1. Brundage is allowed to keep her double recovery.

2. Allstate is required to pay twice for the same loss.

3. Ohio Casualty would receive double recovery; once through its premium and once through its reimbursement.

There is no equity in allowing Ohio Casualty, who received a premium for its loss, to be fully reimbursed for this loss at the expense of Allstate who did not receive a premium for double liability.

To be consistent with the above principles and to prevent inequity, the Court should declare that in any event Allstate is not liable to Ohio Casualty for its PIP reimbursement claim.

C. THE TOTAL AMOUNT OF OHIO CASUALTY'S CLAIM IS ONLY $6,583.08.

Ohio Casualty is seeking reimbursement of $6,651.04 (80% of the $8,313.80). It is not denied that Ohio Casualty paid a total of $8,313.80 in PIP benefits to Brundage, however, Ohio Casualty can only seek reimbursement for the amount the tortfeasor "would be held legally liable." § 31-41-11, Utah Code Ann. (1953), as amended.

The jury determined that Brundage's total special damages were $8,228.84. In addition, Brundage was found to be 20% constributorily negligent. Therefore, the maximum amount that Ohio Casualty can claim is 80% of $8,228.84, or $6,583.08.

POINT II

THE TRIAL COURT ERRED IN SETTING ASIDE THE JUDGMENT OF DISMISSAL IN FAVOR OF ALLSTATE, AFTER A PERIOD OF OVER 1-1/2 YEARS FROM THE DATE OF SAID JUDGMENT OF DISMISSAL

On December 6, 1978, Appellant Allstate made motion for summary judgment upon the grounds that it had fully paid the judgment in the personal injury action, which included the amount representing the PIP payments. In April 1979, the trial court granted Allstate's motion and dismissed Allstate from the action.

In May 1980, Ohio Casualty made motion for relief from said judgment of dismissal, pursuant to Rule 60(b)(7), Utah Rules of Civil Procedure, upon the grounds that this Court had sub-

sequently decided in Allstate v. Ivie, 606 P.2d 1197 (1980), which held that reimbursement claims for PIP payments should be handled through arbitration and that the no-fault carrier has no right to subrogate against its own insured. In December 1980, the court granted Ohio Casualty's motion to set aside the dismissal, holding that its prior decision was erroneous. The trial court stated:

> The Court's ruling was based upon various erroneous rulings of this Court prior to the decisions in Allstate Insurance Co. v. Louise Ivie, 606 P.2d 1197, wherein the Supreme Court of this state held that the P.I.P. insurer was required by the Act to arbitrate its claim with the liability insurer against whom the insured P.I.P. plaintiff secured a judgment, but that the liability insurer had no rights as to the judgment secured.

(R. 99-100)

The issue is whether the court abused its discretion in granting a motion under Rule 60(b)(7), Utah Rules of Civil Procedure, made over a year after the original judgment. The applicable portion of Rule 60(b) states:

> On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party . . . from a final judgment, order, or proceeding for the following reasons . . . . (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time.

A judicial error in the application of the law is not grounds for relief under Rule 60(b). The proper way to correct judicial error is through a motion for new trial or to appeal. In a similar case, Richards v. Siddoway, 24 Utah 2d 314, 471 P.2d

143 (1970), the trial court granted a motion for relief from the judgment under Rule 60. In reversing the trial court this Court stated:

> Since 1939 under both the statute and the Rules of Civil Procedure, one wishing to amend a judgment valid upon its face must move to do so within three months except for correction of clerical errors.

471 P.2d at 145.

The Court cited and quoted with approval the rule stated in 49 C.J.S., Judgments, Section 238, and explained:

> After expiration of the term at which it was rendered. . . a judgment is no longer open to any amendment, revision, modification, or correction which involves the exercise of the judgment or discretion of the court on the merits or on matters of substance . . . the Court has no power at such time to revise and amend a judgment by correcting judicial errors.
>
> * * *
>
> There must be an end to the time when judgment can be questioned.
>
> In this case the protestant had a remedy by motion for new trial and also by appeal, but she permitted the time limited by law therefor to lapse without seeking either. Nearly a year after the adjournment of the term at which the proceedings were had, she, by a motion, attempted to avoid the judgment upon extrinsic grounds. It is a case plainly within the rule which denies jurisdiction of a court to open or vacate its judgments under such circumstances.

471 P.2d at 145, 147.

The above principles of law were reaffirmed in the case of Parker v. Rolfson, 525 P.2d 612 (Utah 1974). See also, 7 Moore's Federal Practice § 60.27 [1] at 348 (1979).

There is good policy behind the law favoring finality to judgments. If a judicial error is grounds to set aside a judgment that is not timely appealed, then no judgment would ever be final.

All of the relevant facts supporting plaintiff's claim were known and argued to the court at the time the court dismissed Allstate from the action. Nothing new relating to the merits of the case was presented to the court. A motion for relief under Rule 60(b) made 13 months after the trial court's ruling is not made within a reasonable time.

In conclusion, the court erred in granting relief from the judgment in favor of Allstate under Rule 60(b) because: (1) misapplication of the law is not grounds for setting aside a judgment under Rule 60(b), Utah Rules of Civil Procedure; and (2) in any event, 13 months after the entry of judgment is an unreasonable amount of time to bring a motion for relief.

POINT III

IN THE EVENT THE TRIAL COURT DID NOT ERR IN SETTING ASIDE THE JUDGMENT OF DISMISSAL IN FAVOR OF ALLSTATE, THE COURT ERRED IN NOT AMENDING THE PERSONAL INJURY JUDGMENT TO REDUCE IT BY THE AMOUNT OF PIP PAYMENTS

As mentioned above, the trial court vacated its order dismissing Allstate from this action upon the grounds that its prior ruling was erroneous in light of the Ivie case. Shortly after the trial court set aside the dismissal, Allstate filed a cross-claim against Brundage, Ivie and Morgan, alleging that the order in a personal injury action requiring Allstate to pay the

full judgment, unreduced by the amount of PIP payments, was improper under the Ivie case, and Brundage and her attorneys should reimburse Allstate for said amount. This cross-claim constituted a claim for relief from the personal injury judgment pursuant to Rule 60(b), which allows a motion for relief to be brought in an independent action. All of the parties necessary to seek relief from the personal injury judgment are present herein. (It is not necessary that Kernan, defendant in the personal injury action, be present since Allstate is Kernan's liability carrier, Allstate paid Brundage's judgment, Kernan would not be liable for PIP reimbursement claim, and Allstate is the real party in interest.)

The inequity and error on the part of the trial court was its application of the Ivie case in favor of Ohio Casualty, without equal application in favor of Allstate. There is no question that had the Ivie case been decided before the trial of the personal injury action, the application of the Ivie case would have resolved all of the problems created herein. The trial court would have reduced the judgment by the amount of the PIP payments. The remaining judgment would have been paid to Brundage and her attorneys. Ohio Casualty would have made demand upon Allstate for reimbursement of the PIP payments and Allstate would have paid the same. Instead, the personal injury judgment was not reduced by the PIP payments, and Allstate was ordered to pay the full judgment.

If the court is going to set aside the dismissal of

Allstate from the action based upon the Ivie case, the court must equally apply the Ivie case to Respondents Brundage and her attorneys, thereby reducing the judgment by the amount of the PIP payments and ordering Brundage and her attorneys to repay said amount to Allstate. Allstate will then be in a position to pay Ohio Casualty's reimbursement claim without being subject to double liability.

Failure to apply the principles outlined in the Ivie case equally to all of the parties involved herein, resulted in gross inequity and abuse of discretion on the part of the trial court. A court of equity is designed to do equity, not create inequity.

CONCLUSION

Appellant respectfully requests that this Court declare Respondents Brundage and her attorneys liable for the PIP reimbursement claim of Respondent Ohio Casualty, upon the grounds that it is Brundage and her attorneys who have received double recovery. The Court should also deny Ohio Casualty's right to recover its PIP reimbursement claim from Allstate, because to do otherwise would result in double recovery to Ohio Casualty at the

expense of Allstate, who would then be subject to double liability. The order dismissing Allstate from this action should therefore be reinstated.

DATED this 2nd day of August, 1982.

Respectfully submitted,

CHRISTENSEN, JENSEN & POWELL

By L. Rich Humpherys
L. Rich Humpherys
Attorneys for Appellant
Allstate Insurance Company

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of August, 1982, I mailed, postage prepaid, two copies of the foregoing Brief of Appellant to:

Taylor D. Carr
225 South Second East, Suite 200
Salt Lake City, Utah 84111
Attorney for Plaintiff-Respondent

Ray H. Ivie
IVIE & YOUNG
48 North University Avenue
P.O. Box 672
Provo, Utah 84603
Attorneys for Defendant Brundage

Robyn Pearce
Secretary