

1992

Jorgina Chambers and Farmers Insurance Exchange v. Agency Rent-A-Car, Inc., and Royal Indemnity Company : Brief of Appellant

Utah Court of Appeals

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JORGINA CHAMBERS and FARMERS
INSURANCE EXCHANGE,

Plaintiffs/Appellees,

v.

AGENCY RENT-A-CAR, INC., and
ROYAL INDEMNITY COMPANY,

Defendant/Appellant.

Case No. 92-0820 CA

Priority No. 15

APPEAL FROM THE THIRD DISTRICT COURT, SALT LAKE COUNTY
JUDGE JAMES S. SAWAYA, PRESIDING

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FILED

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COURT OF APPEALS

JORGINA CHAMBERS and FARMERS
INSURANCE EXCHANGE,

v.

Defendant/Appellant.

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Attorneys for Defendant/Appellant
Agency Rent-A-Car, Inc.

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JURISDICTION

Jurisdiction in this court is proper pursuant to Utah Code Ann. § 78-2-2(3) (j) (1953, as amended).

ISSUES PRESENTED ON APPEAL

1. When a motor vehicle owner such as Agency meets its financial responsibility through self-funded coverage, is the self-funded liability coverage secondary and excess over the insurance provided (pursuant to express contractual agreement between the rental agency and the renter) by the vehicle operator/renter? The summary judgment, which presents a conclusion of law, is reviewed for correctness, according no deference to the trial court. DeBry v. Salt Lake County, 835 P.2d 981, 984 (Utah 1992) (citing Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989)).

2. When a motor vehicle owner such as Agency meets its financial responsibility through self-funded coverage, is the self-funded personal injury protection coverage secondary and excess over the insurance provided (pursuant to express contractual agreement between the rental agency and the renter) by the vehicle operator/renter? The summary judgment, which presents a conclusion of law, is reviewed for correctness, according no deference to the trial court. DeBry v. Salt Lake County, 835 P.2d 981, 984 (Utah 1992) (citing Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989)).

3. If this court determines that Agency's self-funded coverage is primary, is Agency nevertheless permitted to recover the amount it might ultimately pay from Jorgina Chambers, pursuant to her

contract with Agency? DeBry v. Salt Lake County, 835 P.2d 981, 984 (Utah 1992) (citing Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989)).

4. Regardless of whether Agency's self-funded coverage is primary or secondary, was the trial court correct in its apparent ruling that Agency must provide double the statutorily required minimum limits? DeBry v. Salt Lake County, 835 P.2d 981, 984 (Utah 1992) (citing Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989)).

DETERMINATIVE STATUTES

The following statutes, as they existed in December, 1989, control this case: Utah Code Ann. §§ 31A-22-302, -304, 31A-1-301, 31A-4-102, and 41-12a-407. The language of these statutes is reproduced at Addendum A to this Brief.

STATEMENT OF THE CASE

Nature of the Case

This is an action for declaratory relief filed by plaintiffs to determine obligations to indemnify Jorgina Chambers, under Utah's financial responsibility laws.

Course of Proceedings

This appeal is from a final judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, wherein the court granted summary judgment on plaintiff's claim against this defendant/appellant (Agency Rent-A-Car, Inc.) determining obligations under the financial responsibility laws in the State of Utah.

Statement of Facts

The following facts were either set forth pursuant to stipulation in Chamber's motion for summary judgment, or set forth without objection in Agency's response to Chamber's motion for summary judgment.

1. Plaintiff Farmers Insurance Exchange is a reciprocal or inter-insurance exchange organized and existing under and by virtue of the laws of the State of California and authorized to engage in the insurance business in the State of Utah. (R. 21)

2. Defendant Agency Rent-A-Car, Inc. is a Delaware corporation, authorized to conduct the business of renting automobiles in the State of Utah. (R. 22)

3. Defendant Royal Indemnity Company is an insurance company authorized under the laws of the State of Utah to conduct an insurance business in the State of Utah. (R. 22)

4. On or about December 13, 1989, Jorgina Chambers rented a vehicle, a 1989 Dodge Aries, from Agency Rental, Inc. (R. 22)

5. At that time, Jorgina Chambers owned a 1985 Chevrolet Sprint which was insured under a policy issued by Farmers Insurance Exchange with policy limits of \$20,000 for injury to one person, \$40,000 for injuries per occurrence and \$10,000 medical limits. (R. 22)

6. Agency Rental, Inc. at all times relevant hereto is a qualified self-insurer under the provisions of Utah Code Ann. § 41-12a-406 (1986) and was certified as such by the Utah Department of Public Safety. (R. 22)

7. On December 14, 1989 a collision occurred at the intersection of 4505 South and 1175 West in Salt Lake County which involved the 1989 Dodge owned by Agency Rental, Inc. and driven by Jorgina Chambers, and a vehicle driven by A.C. Gomez. (R. 23)

8. A.C. Gomez, at all times relevant hereto, was insured under a policy of automobile liability insurance issued by Royal Indemnity Company. (R. 23)

9. Morgan Chambers was a passenger in the vehicle driven by Jorgina Chambers and owned by Agency Rent-A-Car, Inc. (R. 23)

10. Geraldine Gomez was a passenger in the vehicle driven by A.C. Gomez. (R. 23)

11. As a result of the accident, Morgan Chambers sustained catastrophic injuries. Her medical expenses to date exceed \$70,000. (R. 23)

12. Agency accepted responsibility for personal injury protection coverage, but it does not accept that it should be primarily liable. (R. 40)

13. In all of its rental agreements, Agency requires its renters to specifically sign the following agreement:

Customer represents and warrants that he has a valid policy of automobile liability, collision and comprehensive insurance in force at the time of this rental and further represents and warrants that he shall maintain said policy of automobile insurance in force during the term of this rental. Lessor, relying on said warranty and representation, is not providing automobile liability, collision, comprehensive and/or medical expense insurance to the Customer or any person operating, using or otherwise occupying said vehicle.

This language is included in all contracts and Jorgina Chambers signed below identical language in the contract dated December 13, 1989. (R. 40)

SUMMARY OF ARGUMENT

1. A certificate of self-funded coverage is not the equivalent of insurance. The essence of insurance is an agreement to shift risk. A self-insurer is prohibited from entering into a risk shifting agreement by the State Insurance Code. This conclusion is supported by the decisions of the majority of other jurisdictions that have looked at this issue.

2. If Agency's self-funded coverage is primary, that coverage is still not insurance and Agency is not the insurer of the rental driver. Accordingly, Agency is not deprived of the benefit of the contract knowingly entered into by the rental driver. Pursuant to that contract and to the case law cited from other jurisdictions, Agency is entitled to recover from Jorgina Chambers any amount it might ultimately pay under self-funded coverage.

3. There is no basis in either statutory or case law for a requirement that a motor vehicle operator, operating under a certificate of self-funded coverage, should be liable for double (or even greater) liability limits, compared to other operators.

ARGUMENT

Introduction

Because the trial court did not explain the basis for its ruling and did not specifically address each of plaintiff's submis-

sions, an explanatory note may be helpful as this Court considers the issues that are on appeal.

First, Agency is appealing from the trial court's decision that Agency must provide primary coverage under the liability obligation set forth in Utah's Financial Responsibility laws. Second, Agency is asking this Court to address the question of whether Agency has the primary obligation to provide Personal Injury Protection benefits to the plaintiff.

Even though Agency has voluntarily reimbursed Royal Insurance for the Personal Injury Protection benefits paid by Royal, Agency submits that the issue of primary versus secondary personal injury protection coverage is before the court, because the court did apparently rule that Agency was primary for all required benefits. Agency recognizes that the personal injury protection statute specifically states that: "Primary coverage is given by the policy insuring the motor vehicle in use during the accident." Utah Code Ann. § 31A-22-309(4). (Emphasis added.) However, Agency submits, as set forth below, that the only insurance policy at issue was that provided by plaintiff, Farmers. Indeed, as is also argued below, Agency could not issue insurance if it wanted to. Therefore, despite the language on which Farmers and the Utah State Insurance Commission have relied, the primary versus secondary coverage issue is the same for both liability coverage and personal injury protection. Agency submits that the issue is squarely before this court and that it would be a waste of judicial resources to not address both issues at this time.

Finally, as an introductory matter, Agency reiterates the position it took in response to this Court's consideration of summary disposition. At that time, the court expressed concern with regard to whether this matter was ripe for appeal because this action was apparently never resolved as to Royal. However, Royal was reimbursed by Agency subsequent to the summary judgment decision. Royal was always aware they would be reimbursed by either Farmers or Agency, and it had no interest beyond that reimbursement. To delay resolution of the significant legal issues presented by this appeal because of the technical deficiency that there is no final judgment against Royal would be both unnecessary and wasteful.

I. THE FARMERS' INSURANCE POLICY PROVIDES PRIMARY COVERAGE TO JORGINA CHAMBERS.

The principal issue on appeal is whether a certificate of self-funded coverage constitutes "other valid and collectible insurance" as that phrase is used in the Farmers' automobile insurance policy issued to Jorgina Chambers. For the reasons set forth in Subpart A of this section, self-funded coverage is not insurance. Insurance requires an agreement to shift risk. Agency is forbidden by the State Insurance Code from entering into such agreements. Therefore, the certificate of self-funded coverage cannot constitute insurance. The majority of other jurisdictions that have considered this issue have also concluded that self-funded coverage is not insurance. These cases are discussed in Subpart B of this section. For these reasons, Agency's certificate of self-funded

coverage could not constitute "other insurance" as that phrase is used in the Farmers' policy.

A. A Certificate of Self-funded Coverage is Not Insurance; Agency is Prohibited by Utah Law from Writing Insurance.

In the proceedings below, the trial court adopted plaintiff's position that a person holding a certificate of self-funded coverage stands in the shoes of an insurer for all intents and purposes. This conclusion was premised on the language of Utah Code Ann. § 41-12a-407 in effect at the relevant time, which stated that a holder of a certificate of self-funded coverage agrees to:

. . . pay benefits to persons injured from the self-funded person's operation, maintenance, and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under Section 31A-22-302. U.C.A. § 41-12a-407 (1988)

Based on this language, the court apparently concluded that a certificate holder acts as an insurer, not only for itself, but for all permissive users of the holder's vehicle. Pursuant to this reasoning, the court held that the certificate of self-funded coverage becomes "other collectible insurance" within the meaning of the Farmers' policy and therefore becomes primary.

This conclusion is entirely unsupportable. A certificate of self-funded coverage is not insurance. One need only read the definition of insurance contained in the State Insurance Code in effect at the relevant time to confirm this. Insurance is defined in § 31A-1-301 of the insurance code as "any arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more persons" Utah Code Ann. § 31A-1-301. Thus, the

essential element of insurance is a risk shifting agreement between two or more parties pursuant to which the insurer agrees to indemnify the insured against loss, even loss caused by the insured's own negligence. For example, when Ms. Chambers purchased her automobile policy from Farmers', she paid a premium to Farmers. In exchange for the premium, Farmers' agreed to assume the risk that she might incur financial liability as the result of her negligent operation of a motor vehicle. The agreement between Ms. Chambers and Farmers', to shift the risk of financial liability from Chambers to Farmers, is an example of insurance.

In contrast, the agreement between Agency and Chambers was not insurance. Agency received no premium from Chambers. Agency made no agreement to indemnify Chambers for loss she might incur as the result of negligent driving. To the contrary, Agency required Chambers to sign an acknowledgement that Chambers had in place a policy of insurance to insure her for any liability that might arise from her operation of Agency's automobile.

Further, and most significantly, Agency could not have insured Chambers had it wanted to. This conclusion is mandated by § 31A-4-102 and §§ 31A-1-301(40) and (44) of the State Insurance Code. Section 31A-4-102 prohibits any person from doing an insurance business in Utah except an insurer authorized to do business under Chapter 5, 6, 7, 8, 9, 10, 11, 13 or 14 of the Insurance Code. Utah Code Ann. § 31A-4-102. "Insurance business" includes: . . . (e) providing other persons with insurance as defined in subsection (40). Utah Code Ann. § 31A-1-301. As explained above, insurance is

defined as any agreement between two or more persons to shift risk. Agency Rent-A-Car is not a qualified insurer. Therefore, it is forbidden by law from entering into agreements with any other parties to insure them by shifting the risk of financial liability from that party to Agency. Yet this is exactly what the court below ruled when it held that the agreement between Agency and Chambers constituted "other collectible insurance."

It therefore becomes obvious that the court below misconstrued Utah Code Ann. § 41-12a-407(2) when it ruled that that statute made a certificate of self-funded coverage the equivalent of insurance. Under the correct interpretation of § 41-12a-407(2), a certificate of self-funded coverage is analogous to a bond rather than to a policy of insurance. The holder of a certificate of self-funded coverage agrees to respond and pay damages for any injury resulting from its "operation, maintenance, and use of its motor vehicle." Operation and use of its motor vehicles includes rental of those motor vehicles to third parties such as Ms. Chambers. Agency did not agree with Chambers to indemnify her for her negligence. However, by operation of the statute, Agency is obligated to indemnify third-parties for injuries caused by the rental driver to the same extent an insurer would be. Its liability is, however, derivative and arises by operation of statute rather than pursuant to a risk shifting agreement between Agency and its renter. It is this lack of agreement to shift risk that prevents the relationship from constituting insurance. Thus, like the issuer of a bond, the holder of a certificate of self-funded coverage agrees to stand jointly

liable with the tortfeasor. The reference to insurance in § 41-12a-407(2) simply defines the limits of the obligation to indemnify. And, as in the case of a bond, there is no shifting of risk because, like the issuer of the bond, the holder of a certificate of self-funded coverage retains the right to make a claim against the tortfeasor.

The lack of a risk shifting agreement precludes a certificate of self-funded coverage from qualifying as other collectible insurance under the Farmers' policy. Therefore, because it is the only policy of insurance, the Farmers' insurance policy must be primary.

B. Other States Hold that Self-funded Coverage is Not Insurance.

Home Indemnity Co. v. Humble Oil & Refining Co., 314 S.W.2d 861 (Tex. 1958), cited to the trial court by Agency, is the lead case holding that self-funded coverage is not insurance. Humble also stands for the proposition that the self-funded operator has the right to make a claim over against the tortfeasor/ permissive user. In Humble, the defendant, Humble Oil & Refining Co. held a certificate of self-insurance on its vehicles. The plaintiff, Home Indemnity Co. had issued a policy of automobile liability insurance to a Humble employee. The applicable Texas statute required a self-insurer to

Pay on behalf of the insured named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, all sums which the insured shall become legally obligated to pay as damages arising out of the ownership, maintenance or use of such motor

vehicle or motor vehicles within the United States of America.

Id. at 864. (Emphasis added.) The employee was involved in an accident while operating a Humble automobile. Home Indemnity Co. brought an action against Humble claiming that Humble was primarily liable. The Home's claim was based on its insurance policy that stated that when the insured was driving any other car than his own personal car, Home Indemnity was liable only for such damages as might be assessed against the insured which were not covered by "other valid and collectible insurance."

The Texas court held that the self-insurer's liability was secondary to that of the driver. The court reasoned that the owner of a motor vehicle under a certificate of self-insurance becomes jointly liable to the injured party along with the negligent driver and, by operation of the self-insurance statute, was obligated to compensate an injured party for negligent acts of the driver. The court held that had the injured party sued Humble, Humble could have brought an action against its employee as the actively negligent party and recovered judgment against him. Id. at 865. The court observed that this was the exact opposite result from what could have occurred had the certificate been the equivalent of insurance in which case, the driver could have brought an action against Humble to recover damages paid by him in satisfaction of a judgment rendered against him as the result of negligence.

In Southeast Title and Insurance Company v. Collins, 226 So.2d 247 (Fla. App. 1969) the Florida Court of Appeals cited Humble in ruling that proof of financial responsibility is not the equiva-

lent of insurance. The court stressed that shifting of risk is an essential incident of insurance. The court reasoned that, because proof of financial responsibility does not shift risk, it cannot be considered insurance. Id. at 248.

The Supreme Court of Louisiana ruled the same way in Hearty v. Harris, 574 So.2d 1234 (La. 1991). The Harris court reasoned that the only form of automobile liability coverage that can qualify as insurance is a policy that has been officially certified and issued by an insurance carrier duly authorized to transact business within the State of Louisiana. Id. at 1240. The court held that a certificate of self-insurance does not meet the certification requirement. Therefore, it cannot be considered insurance. As discussed previously, the same result is mandated under Utah's insurance law.

Finally, the Supreme Court of Missouri also followed Humble in ruling that a certificate of self-insurance is not the equivalent of insurance in American Family Mutual Ins. Co. v. Missouri P&L Co., 517 S.W.2d 110 (Mo. 1974). The American Family court quoted the language from the Humble decision that distinguished insurance from self-insurance on the basis that insurance includes an agreement to indemnify the insured "against loss, even as against his own negligence." Id. at 114 (quoting Humble at 866). See also Universal Underwriters Insurance Co. v. Marriott Homes, Inc., 238 So.2d 730, 732 (Ala. 1970) (Self-insurance "is actually the antithesis of insurance as that term is commonly used.")

The reasoning of Humble and the other cited cases is controlling on the issue of whether self-funded coverage constitutes "other insurance." The obligation to pay any other person all sums which an insurer would have to pay sets forth the limits of the obligation to indemnify. It does not make the certificate of self-funded coverage "insurance". Because the obligation is to indemnify rather than insure, the certificate cannot constitute "other insurance" as that phrase is used in the Farmers' policy. Therefore, the Farmers' insurance policy remains the primary policy.¹

II. SELF-FUNDED PERSONAL INJURY PROTECTION IS
SECONDARY AND EXCESS OVER THE INSURANCE
PROVIDED BY THE VEHICLE OPERATOR.

Self-funded Personal Injury Protection (PIP) is secondary and excess over the insurance provided by the vehicle operator/renter. In the proceedings below, Agency stipulated that it would pay the PIP benefits. However, it disputed that it should be held to be primarily liable for those benefits. Agency's position in this regard is premised on Utah Code Ann. § 31A-22-309(4) which states that with respect to Personal Injury Protection, "primary coverage is given by the policy insuring the motor vehicle during the accident." Utah Code Ann. § 31A-22-309(4) (emphasis added). Self-funded Personal Injury Protection is not insurance for the same reason self-funded coverage generally is not insurance. Because Agency does not insure, but rather, indemnifies, its coverage cannot be considered a

¹ The Humble decision and rationale have been specifically approved by the Texas Supreme Court. Allstate Ins. Co. v. Zellars, 462 S.W.2d 550 (Tex. 1970).

"policy insuring the motor vehicle during the accident." For this reason, self-funded Personal Injury Protection cannot be primary.

III. AGENCY'S LIABILITY LIMITS CANNOT EXCEED STATUTORY MINIMUMS.

The trial court's perfunctory minute entry dated July 14, 1992, did not address the plaintiff's discrete claims for relief. Plaintiff, however, submitted an order that specifically granted each of its claims. Agency objected to the proposed order, which objection was timely filed, but the court entered the order before the time for objection had run, in clear contravention of Rule 4-504(2), Code of Judicial Administration. Agency's objection was prompted in large part by the incredible implication of the court's ruling, later ratified by the court's summary judgment order, apparently holding Agency and all self-funded motor vehicle operators responsible for amounts significantly in excess of the explicit statutory requirements.

Although neither the parties nor this Court have the benefit of any explanation from the trial court, the ruling regarding limits appears to rely on Utah Code Ann. § 41-12a-407, as it existed at the time of the accident - 1989. The language of that statute, however, does not support such a finding. The statute, as it existed in 1989, provided as follows:

The department may, upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has, and will continue to have, the ability to pay judgments in an amount equal to twice the single limit under subsection 31A-22-304(2). Persons holding a certificate of self-funded coverage under this subsection shall pay bene-

fits to persons injured from the self-funded person's operation, maintenance, and use of the motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under § 31A-22-302. [Emphasis added.]

Section 31A-22-302, in turn, refers to § 31A-22-304 for liability coverage, which stated limits in 1989 of \$20,000 for bodily injury for one person, and \$40,000 because of bodily injury or the death of two or more persons in any one accident. The same section set a minimum limit of \$10,000 because of injury to or destruction of property involved in any one accident. Nowhere in the statutes dealing with financial responsibility is a self-funded operator, or any other operator, required to provide coverages in excess of the minimums set forth in the foregoing sections.

Section 41-12a-407 set forth above, clearly requires that a self-insurer have the ability to pay judgments in twice the minimum limits, but it does not require that a self-funded insurer should pay that amount. In fact, the second sentence of the paragraph makes it clear that the self-funded insurer is held to the same standards as insurers with respect to limits. Indeed, as Agency argued at the hearing on the motion for summary judgment, it is inconsistent for plaintiff to argue that self-funded coverage is the same as insurance, and then to argue that a self-funded operator should be liable for totally different limits. (R. 140)

The amendment to § 41-12a-407, effective 1991, illustrates even more clearly that it could not have been the legislature's intent that self-insurers be responsible for more than the usual statutory limits. That is, the amended statute breaks the first

paragraph into two subsections. The first provides that a self-funded operator which has more than twenty-four vehicles must satisfy the department that it has at least \$200,000 in securities, plus \$100 for each motor vehicle up to and including 1,000 and \$50 for every motor vehicle over 1,000 motor vehicles. Utah Code Ann. § 41-12a-407(1) (1991). The second subsection of the statute then reads exactly the same as the second sentence of the 1989 version. Clearly, the legislature in 1991 did not intend that a self-insurer owning 24 motor vehicles be subject to minimum liability requirements of \$202,400 per accident, any more than the previous legislature intended that a self-funded operator be responsible for twice the minimum limits.

Agency submits that there is a logical basis for a statute requiring proof of financial security and the ability to pay judgments in the amount of the minimum limits required by law. It makes sense to require that the financial ability exceed one claim at minimum limits. In fact, the 1989 statute only requiring an ability at twice the amount of minimum limits was arguably inadequate, particularly in the case of self-funded operators who maintain large fleets. The 1991 amendment addressed that issue. It did not change the limits, any more than the earlier statute imposed higher limits. The purpose of the cited language in both versions of the statute, was to ensure the availability of minimum limits, not to increase those limits. Accordingly, the trial court must be reversed on this issue and this Court should make it clear that regardless of how an operator chooses to meet its financial responsibility commitments

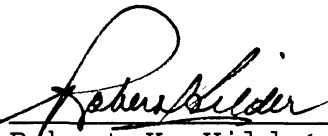
under the applicable statutes, the limits are uniform with respect to all operators.

CONCLUSION

Based on the foregoing arguments, Agency respectfully submits that this Court should reverse the trial court's grant of summary judgment in favor of Farmers and remand the matter to the trial court with instructions to deny Farmers' motion for summary judgment. In addition, this Court should rule as a matter of law that self-funded motor vehicle operators are required to provide coverage that is secondary or excess to that provided by insurers, and that in no event is a self-funded operator required to pay more than the minimum limits provided by statute at the applicable time.

DATED this 25th day of March, 1993.

CHRISTENSEN, JENSEN & POWELL, P.C.

By 
Robert K. Hilder
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Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

This is to certify that on the 25th day of March, 1993,
four true and correct copies of BRIEF OF APPELLANT were mailed,
postage prepaid, to:

Andrea C. Alcabes
HANSON, NELSON, CHIPMAN & QUIGLEY
Attorneys for Plaintiffs/Appellees
136 South Main, Suite 910
Salt Lake City, UT 84101

A handwritten signature in cursive script, appearing to read "Robert Kider", is written over a horizontal line.

ADDENDA

ADDENDUM A

History: C. 1953, 31A-4-101, enacted by L. 1985, ch. 242, § 9.

Meaning of "this code." — See note under same catchline following § 31A-1-104.

31A-4-102. Qualified insurers.

No person may do an insurance business in Utah, either in person, through agents or brokers, or through the mail or any other method of communication, except:

- (1) an insurer authorized to do business in Utah under Chapter 5, 6, 7, 8, 9, 10, 11, 13, or 14, within the limits of its certificate of authority;
- (2) a joint underwriting group under Section 31A-2-214 or 31A-20-102;
- (3) an insurer doing business under Section 31A-15-103;
- (4) a person who, pursuant to Section 31A-1-105, submits to the commissioner a certificate from the United States Department of Labor, or such other evidence as satisfies the commissioner, that the laws of Utah are preempted with respect to specified activities of that person by Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law; or
- (5) A person exempt from the application of the Insurance Code under Section 31A-1-103 and all other applicable statutes.

History: C. 1953, 31A-4-102, enacted by L. 1985, ch. 242, § 9; 1987, ch. 91, § 9.

Amendment Notes. — The 1987 amendment, in Subsection (2), substituted "31A-2-214 or 31A-20-102" for "31A-4-202."

Federal Law. — Section 514 of the Employee Retirement Income Security Act of 1974, referred in Subsection (4), appears as 29 U.S.C. § 1144.

Insurance Code. — See § 31A-1-101.

31A-4-103. Certificate of authority.

Each certificate of authority issued by the commissioner shall specify the name of the insurer, the kinds of insurance it is authorized to transact in Utah, and any other information the commissioner requires.

History: C. 1953, 31A-4-103, enacted by L. 1985, ch. 242, § 9.

Cross-References. — Exemption from fees of lieutenant governor, § 21-1-2.

COLLATERAL REFERENCES

C.J.S. — 44 C.J.S. Insurance § 69.
A.L.R. — Liability of insurance agent, for exposure of insurer to liability, because of issu-

ance of policy beyond authority or contrary to instructions, 35 A.L.R.3d 907.

Key Numbers. — Insurance ⇐ 5.

31A-4-104. Bar on local activity by persons not authorized to do an insurance business.

A person not qualified under Section 31A-4-102 to do an insurance business may not, from offices or by personnel or facilities located in Utah, solicit insurance applications or transact insurance business in another jurisdiction.

History: C. 1953, 31A-4-104, enacted by L. 1985, ch. 242, § 9.

(37.5) "Individual" means a natural person.

(38) "Inland marine insurance" includes insurance covering:

- (a) property in transit on or over land;
- (b) property in transit over water by means other than boat or ship;
- (c) bailee liability;
- (d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and
- (e) personal and commercial property floaters.

(39) "Insolvency" means that an insurer is unable to pay its debts or meet its obligations as they mature or that an insurer's qualified assets under Section 31A-17-201 do not exceed its liabilities plus:

- (a) (i) minimum required capital; or
- (ii) for mutuals, permanent surplus; plus
- (b) 30% of the compulsory surplus required to be maintained under Section 31A-17-302 or 31A-8-210.

For purposes of this definition, "liabilities" includes reserves required by law, and "qualified assets" includes $\frac{1}{2}$ of the maximum total assessment liability of the policyholders of the insurer.

(40) "Insurance" means any arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons, or any arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute his risk. "Insurance" includes:

- (a) risk distributing arrangements providing for compensation or replacement for damages or loss through the provision of services or benefits in kind;
- (b) contracts of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and
- (c) plans in which the risk does not rest upon the person who makes the arrangements, but with a class of persons who have agreed to share it.

(41) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy. Refer also to Subsection 31A-26-102(1).

(41.5) "Interinsurance exchange" is defined in Subsection (69).

(42) "Insurance agent" or "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance. Refer to Subsection 31A-23-102(3) for exceptions to this definition.

(43) "Insurance broker" or "broker" means a person who acts in procuring insurance on behalf of an applicant for insurance or an insured, and does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts. Refer also to Subsection 31A-23-102(3) for exceptions to this definition.

(44) "Insurance business" or "business of insurance" includes:

- (a) providing health care insurance, as defined in Subsection (35),

panied by evidence that there are no unsatisfied liens of any character on the assets deposited.

(2) The deposit shall be held by the state treasurer in trust to satisfy any execution on a judgment that would be paid under an insurance policy conforming to Section 31A-22-302 had the treasurer issued such a policy.

(3) Except as provided under Subsection (2), assets deposited with the treasurer under this chapter are exempt from attachment or execution.

History: C. 1953, 41-12a-406, enacted by
L. 1985, ch. 242, § 48.

41-12a-407. Certificate of self-funded coverage as proof of owner's or operator's security.

(1) The department may upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has and will continue to have the ability to pay judgments in an amount equal to twice the single limit amount under Subsection 31A-22-304(2). Persons holding a certificate of self-funded coverage under this subsection shall pay benefits to persons injured from the self-funded person's operation, maintenance, and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under Section 31A-22-302.

(2) Upon not less than five days' notice and a hearing pursuant to the notice, the department may, upon reasonable grounds, cancel the certificate. Failure to pay any judgment up to the limit under Subsection 31A-22-304(2) within 30 days after the judgment is final is a reasonable ground to cancel the certificate.

History: C. 1953, 41-12a-407, enacted by
L. 1985, ch. 242, § 48.

NOTES TO DECISIONS

ANALYSIS

Effect of self-insurance.
Liability of county
Self-insurer.

Effect of self-insurance.

Former provision that a self-insurer had to provide "security equivalent to that offered by a policy of insurance" did not engraft onto the statute all benefits which may be described as "standard" insurance policy provisions *Foster v. Salt Lake County*, 712 P.2d 224 (Utah 1985).

Liability of county.

Liability of county, as self-insurer of own vehicles operated by permissive users, under former law. See *Foster v. Salt Lake County*, 712 P.2d 224 (Utah 1985).

Self-insurer.

Since a certificate of self-insurance is simply an assurance that judgments will be paid and is not really insurance or a policy of insurance, this section, by its own terms, does not require a self-insurer to provide uninsured motorist coverage to its passengers *American States Ins Co v Utah Transit Auth.*, 699 P.2d 1210 (Utah 1985) (decided under similar provisions of former § 41-12-21.1).

31A-22-302. Required components of motor vehicle insurance policies — Exceptions.

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

(a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304; and

(b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators. These owners and operators are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles.

History: C. 1953, 31A-22-302, enacted by L. 1985, ch. 242, § 27; 1987, ch. 183, § 1.

Amendment Notes. — The 1987 amendment, in Subsection (2), inserted "trailers, and semitrailers", designated the second and third sentences in former Subsection (2) as Subsec-

tion (3), and, in Subsection (3), in the first sentence inserted "trailer, and semitrailer" and in the second sentence substituted "These" for "Motorcycle" and "any of these vehicles" for "a motorcycle "

NOTES TO DECISIONS

ANALYSIS

Liability of county.

Uninsured motorist coverage.

—Exclusionary clause

Liability of county.

Liability of county, as self-insurer of own vehicles operated by permissive users, under former law See *Foster v Salt Lake County*, 712 P 2d 224 (Utah 1985).

Uninsured motorist coverage.

—Exclusionary clause.

Former § 41-12-21 1, which merely required insurers to offer uninsured motorist coverage

and authorized motorists to waive coverage, did not require them to allow an individual to purchase insurance on one vehicle and obtain coverage on all the other vehicles in his household, a clause excluding such multiple coverage is permissible *Clark v State Farm Mut. Auto Ins Co*, 743 P 2d 1227 (Utah 1987)

A policy that covered the insured for any injury caused by an uninsured motorist, excluding therefrom only uninsured "automobiles" owned by the insured, did not exclude uninsured motorist coverage when the insured was operating a motorcycle *Bear River Mut Ins. Co v Wright*, 770 P 2d 1019 (Utah Ct App 1989).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am Jur 2d Automobile Insurance § 4.

C.J.S. — 60 C.J.S. Motor Vehicles § 110.

A.L.R. — Validity and construction of "no-fault" automobile insurance plans, 42 A.L.R 3d 229

Injury or death caused by assault as within coverage of no-fault motor vehicle insurance, 44 A L R 4th 1010

Validity, under insurance statutes, of coverage exclusion for injury to or death of insured's family or household members, 52 A L R 4th 18.

What constitutes "entering" or "alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage, 59 A L R 4th 149

Key Numbers. — Automobiles ⇐ 144 1(4).

COLLATERAL REFERENCES

A.L.R. — Liability insurance: when is vehicle in "dead storage," 48 A.L.R.4th 591.

Automobile liability insurance policy flight from police exclusion: validity and effect, 49 A.L.R.4th 325.

What constitutes use of vehicle "in the automobile business" within exclusionary clause of liability policy, 56 A.L.R.4th 300.

Validity and construction of automobile insurance provision or statute automatically terminating coverage when insured obtains another policy providing similar coverage, 61 A.L.R.4th 1130.

What constitutes "motor vehicle" for purposes of no-fault insurance, 73 A.L.R.4th 1053.

31A-22-304. Motor vehicle liability policy minimum limits.

Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below either of the following:

(1) twenty thousand dollars because of bodily injury to or death of one person, in any one accident, and, subject to this limit for one person, in the amount of \$40,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$10,000 because of injury to or destruction of property of others in any one accident; or

(2) forty thousand dollars in any one accident whether arising from bodily injury to or death of others, or from destruction of or damage to the property of others.

History: C. 1953, 31A-22-304, enacted by L. 1985, ch. 242, § 27.

NOTES TO DECISIONS

ANALYSIS

Liability of county.

Liability of self-insurers.

Cited.

Liability of county.

Liability of county, as self-insurer of own vehicles operated by permissive users, under former law. See *Foster v. Salt Lake County*, 712 P.2d 224 (Utah 1985).

Liability of self-insurers.

Public policy as expressed in Utah law is

that self-insurers must provide security for damages inflicted by themselves, and by permissive users of their vehicles. There is no expressed public policy that would require finding liability based upon mere ownership of a vehicle. *Lane v. Honeywell, Inc.*, 663 F. Supp. 370 (D. Utah 1987) (decided under former Title 31).

Cited in *Wagner v. Farmers Ins. Exch.*, 786 P.2d 763 (Utah Ct. App. 1990).

COLLATERAL REFERENCES

A.L.R. — Consortium claim of spouse, parent or child of accident victim as within extended "per accident" rather than "per person" coverage of automobile liability policy, 46 A.L.R.4th 735.

What constitutes single accident or occurrence within liability policy limiting insurer's liability to a specified amount per accident or occurrence, 64 A.L.R.4th 668.

ADDENDUM B

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

CHAMBERS, JORGINA	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 910901699 CV
	:	DATE 07/14/92
VS	:	HONORABLE JAMES S. SAWAYA
	:	COURT REPORTER
AGENCY RENT-A-CAR, INC	:	COURT CLERK STH
DEFENDANT	:	

TYPE OF HEARING:
PRESENT:

P. ATTY.
D. ATTY.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT HAVING BEEN HEARD
BY THIS COURT AND THE MATTER OF THE COURT'S DECISION HAVING BEEN
TAKEN UNDER ADVISEMENT. THE COURT HAVING CONSIDERED AND NOW
BEING FULLY ADVISED IN THE PREMISES ORDERS MOTION GRANTED.

CC: ANDREA C. ALCABES
ROBERT K. HILDER
MR. GLEN CLEEK

JUL 17 1992

ADDENDUM C

JUL 27 1992

JUL 27 1992

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Attorneys for Plaintiffs
136 South Main Street, Suite 910
Salt Lake City, Utah 84101
Telephone: (801) 364-3627

S. J. Sawaya
County Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

JORGINA CHAMBERS and
FARMERS INSURANCE EXCHANGE,

Plaintiffs,

vs.

AGENCY RENT-A-CAR, INC., and
ROYAL INDEMNITY COMPANY,

Defendants.

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SUMMARY JUDGMENT

2176075

7-28-92-8.14am

Judge James S. Sawaya

Civil No. C-91-1699

Plaintiff's Motion for Summary Judgment came on for hearing on July 6, 1992, the Honorable James S. Sawaya presiding. Memoranda had been filed by counsel for plaintiffs and counsel for Agency Rent-A-Car, Inc. The plaintiffs were represented at the hearing by counsel, Andrea C. Alcabes. Defendant Agency Rent-A-Car, Inc. was represented by counsel, Robert K. Hilder. Defendant Royal Indemnity Company did not appear. The court heard arguments on plaintiff's Motion for Summary Judgment and took the matter of the court's decision under advisement.

The court having considered and now being fully advised in the premises, hereby orders that plaintiffs' Motion for Summary Judgment is granted and it is hereby:

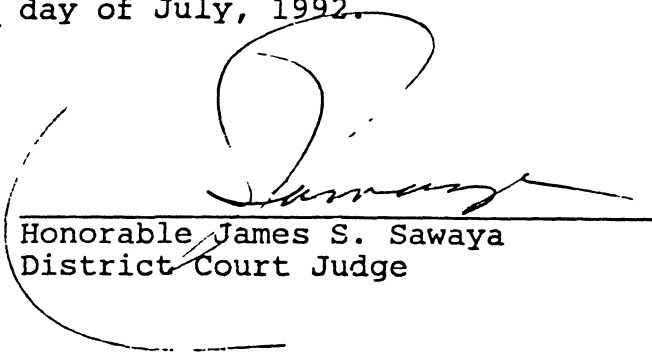
ADJUDGED, ORDERED, AND DECREED as follows:

1. Agency Rent-A-Car, Inc. owes primary coverage for liability and for personal injury protection benefits for the accident of December 14, 1989, involving a vehicle owned by Agency Rent-A-Car, Inc. and driven by Jorgina Chambers and vehicle driven by A.C. Gomez. Insurance coverage by Farmers Insurance Exchange is secondary.

2. Agency Rent-A-Car, Inc. owes liability coverage in the amount of \$80,000.00 for the accident of December 14, 1989, involving a vehicle owned by Agency Rent-A-Car, Inc. and driven by Jorgina Chambers and a vehicle owned by A.C. Gomez.

3. The issue of liability for reimbursement for personal injury protection coverage is to be decided by mandatory, binding arbitration between defendant Royal Indemnity Company and Agency Rent-A-Car, Inc.

DATED this 27 day of July, 1992.



Honorable James S. Sawaya
District Court Judge