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Record No. 7056

In the
Supreme Court of Appeals of Virginia
At Richmond

CRITERION INSURANCE COMPANY

v.

GRANGE MUTUAL CASUALTY COMPANY, ET AL.

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7056

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

Criterion Insurance Company, Plaintiff in error,

against

Grange Mutual Casualty Company, Clyde Salmons, William H. Buck, Richard J. Attebury, Robert S. Campbell, Thomas C. Burleson, Henry O. Mangrum, Melvin L. Langfitt and Fred W. McDaniel, Defendants in error.

From the Court of Law and Chancery of the City of Norfolk
Walter A. Page, Judge

Upon the petition of Criterion Insurance Company a writ of error is awarded it to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 1st day of March, 1968, in a certain action at law then therein depending, wherein the said petitioner was plaintiff and Grange Mutual Casualty Company and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Law and Chancery Court in the penalty of $300, with condition as the law directs.

RECORD

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page 1 }

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MOTION FOR DECLARATORY JUDGMENT

TAKE NOTICE that the Plaintiff, Criterion Insurance Company, a foreign corporation authorized to con-
page 2 } duct insurance business in the State of Virginia, does hereby move the Court of Law and Chancery of the City of Norfolk for a declaratory judgment under the provisions of Title 8, Chapter 25 of the 1950 Code of Virginia, as amended, to construe the provisions of an automobile insurance policy sold by the Defendant, Grange Mutual Casualty Company, to Fred W. McDaniel, and to declare the obligations of Grange Mutual Casualty Company thereunder as well as the rights of this Plaintiff and the other Defendants therein.

These rights and obligations have arisen in the following manner:

1. The Defendant, Fred W. McDaniel, purchased automobile liability insurance policy No. 707708 from the Grange Mutual Casualty Company, Columbus, Ohio, which he renewed December 1, 1963, to be effective until June 1, 1964.

2. That Fred W. McDaniel paid the premium to William K. Bookwalter, agent for Grange Mutual Casualty Company, on November 21, 1963, and at that time informed the said William K. Bookwalter that he, McDaniel, was living in Norfolk, Virginia, and that the car to be insured, a 1959 Chevrolet, was principally garaged and to be principally used in Virginia.

3. That on January 25, 1964, the 1959 Chevrolet owned by Fred W. McDaniel, and insured by Grange Mutual Casualty Company, was involved in an automobile accident in the City of Norfolk, Virginia, while it was being driven by Melvin L. Langfitt with the permission of Fred W. McDaniel.

4. That as a result of this collision, suits have been filed in the Court of Law and Chancery of the City of Norfolk against Melvin L. Langfitt, and Fred W. McDaniel, by the following persons: Clyde Salmons (Docket No. 8233), William H. Buck (Docket No. 8930), William J. Attebury (Docket No. 8234),

Robert G. Campbell (Docket No. 8931), Thomas C. Burleson (Docket No. 8232), and Henry Mangrum (Docket
page 3 } No. 8237); all of these claims asserting damages to the respective Plaintiffs sustained as a result of the negligence of Langfitt and McDaniel in the above described accident.

5. That at the time of the accident, January 5, 1964, the policy issued by Grange Mutual Casualty Company to Fred W. McDaniel was in full force and effect.

6. That at the same time, the Criterion Insurance Company had in effect a policy of automobile insurance on a 1961 Chevrolet owned by its insured, Henry O. Mangrum, being its Policy No. A-2-63-99. The car so insured by Criterion was being driven at the time of the accident by Defendant Burleson with the permission of Henry O. Mangrum and therefore Criterion's policy was in effect on the Mangrum vehicle; which vehicle was involved in the above mentioned accident with the McDaniel car at the time it was being driven by the Defendant Langfitt.

7. That the Criterion Insurance Company's policy included, among other coverages, uninsured motorist coverage, which coverage would apply to, and be of benefit to, all persons riding in the Mangrum car at the time of the accident, which included the Defendants, Salmon, Buck, Attebury, Campbell, Burleson and Mangrum.

8. The Defendant, Grange Mutual Casualty Company, had denied coverage to Langfitt and McDaniel, which means these Defendants would be uninsured motorists.

9. If the Defendants, Langfitt and McDaniel, are uninsured motorists, then the Plaintiff will be obligated to all of the passengers, as well as the driver in the Mangrum vehicle, for any damages they might be entitled to collect from Langfitt and McDaniel.

10. A genuine dispute exists between the parties because the Plaintiff claims that the Defendant, Grange Mutual Casualty Company, has wrongfully denied coverage to the Defendants, Langfitt and McDaniel, and the Plaintiff
page 4 } further asserts that the Grange Mutual policy should provide automobile liability insurance protection to the Defendants, Langfitt and McDaniel for all injuries and damages, within its policy limits, arising out of the accident of January 5, 1964; whereas, the Defendant, Grange Mutual Casualty Company, asserts that its policy does not provide such protection.

WHEREFORE, this suit is brought, and the Plaintiff asks that the Court declare the rights of all parties under the terms

of this contract and grant other and further relief as may be just and proper.

CRITERION INSURANCE COMPANY

By Robert M. Furniss
Of counsel

Filed in the Clerk's Office the 14 day of October, 1964.

Teste:

W. L. Prieur, Jr., Clerk

Z. M. Calvert, D. C.

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GROUNDS OF DEFENSE

The defendant, Grange Mutual Casualty Company, as and for its grounds of defense to the motion for declaratory judgment filed herein and pursuant to an order of the Court of March 15, 1965, requiring it to file responsive pleadings, as and for its grounds of defense to said motion for declaratory judgment says:

1. That it admits the allegations of paragraph 1 and alleges that the automobile described in Grange Mutual Casualty Company Policy No. 707708 was a 1959 Chevrolet two-door sedan, motor number S-A59N20614, hereinafter referred to as the "insured automobile."

2. That it does not have sufficient information regarding the truth or falsity of the allegations of paragraphs 2, 3, 4, 6 and 7 to either admit or deny the same, except to the extent that it hereinafter specifically denies any allega-
page 37 } tions contained therein, and, therefore, calls for strict proof of the allegations in such paragraphs.

3. That it denies the allegations of paragraph 5.

4. That on January 5, 1964 the insured automobile was involved in an automobile accident in the City of Norfolk, Virginia and that said insured automobile was being operated at the time of this accident by Melvin L. Langfitt without the permission, express or implied, of Fred W. McDaniel.

5. That Grange Mutual Casualty Company Policy No.

707708, by reason of an endorsement thereto, which was in full force and effect on January 5, 1964, expressly provided that any insurance coverage provided by such policy should not apply when the insured automobile was being operated by any person other than the named insured or a member of the named insured's family.

6. That at the time of the accident on January 5, 1964 the insured automobile was not being operated by Fred W. McDaniel, the named insured, nor was Melvin L. Langfitt a member of Fred W. McDaniel's family.

7. That Grange Mutual Casualty Company Policy No. 707708 was not issued or delivered in the State of Virginia to Fred W. McDaniel but rather was issued and delivered to Fred W. McDaniel in the State of Ohio.

8. That it has never been licensed by the State of Virginia to engage in any insurance transaction or do any insurance business in the State of Virginia and was not so licensed on December 1, 1963 and that it in fact has never engaged in any insurance transaction or done any insurance business in the State of Virginia and did not do so on December 1, 1963.

page 38 } 9. That it denies that the insured automobile was principally garaged and principally used in the State of Virginia at the time Grange Mutual Casualty Company Policy No. 707708 was issued and delivered to Fred W. McDaniel.

10. That it admits that it has denied coverage to the defendants, Melvin L. Langfitt and Fred W. McDaniel, for any liability arising out of the accident of January 5, 1964 under and pursuant to its Policy No. 707708 and denies that they are entitled to any coverage under such policy of insurance.

11. That it denies that it has wrongfully denied coverage to the defendants, Melvin L. Langfitt and Fred W. McDaniel, and denies that it is required to provide any automobile liability insurance protection to them or either of them for any injuries and damages arising out of the accident of January 5, 1964.

GRANGE MUTUAL CASUALTY COMPANY

By James L. Mills, Counsel

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Court of Law and Chancery

Filed 4-5-65 By: W. K. McCrory, D. C.

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MOTION TO AMEND

The Plaintiff moves the Court to allow it to amend its Motion for Declaratory Judgment so as to add Paragraph Eleven to the Motion to read as follows:

11. The Plaintiff further seeks damages from the Defendant Grange Mutual in the amount of $12,000.00, for amounts it has expended in settlement of claims and for attorneys' fees incurred in the defense of the cases brought against McDaniel and Langfitt, including interest from the date of payment plus 12½ per cent attorneys' fees allowed by law for the collection of these damages.

CRITERION INSURANCE COMPANY

By R. M. Furniss
Of counsel

Court of Law and Chancery

Filed 4-12-65

By: ....., D. C.

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MOTION TO VACATE ORDER AND TO DISMISS

The defendant, Grange Mutual Casualty Company, by counsel, hereby moves the Court to dismiss this action on the grounds stated in its motion to dismiss filed herein on or about April 7, 1967 and further moves the Court to vacate its order entered herein on May 4, 1967 on the ground that:

1. By its said order of May 4, 1967 the Court stayed further proceedings in this cause for a reasonable length of time.

2. At the time of the hearing, pursuant to which said order of May 4, 1967 was entered, three related personal injury

cases were set for trial in this Court on June 21, June 26 and July 24, 1967. These cases were continued from their trial dates for reasons unknown to this defendant.

3. The parties are at issue in this case, all of
page 54 } the evidence having been taken, a transcript of the testimony having been submitted to the Court, together with the briefs requested by the Court, and the case is now in the breast of the Court subject to its order of May 4, 1967.

4. A reasonable length of time has expired since the hearing of April 7, 1967 and the rights of this defendant are being prejudiced by delaying the decision in this case.

GRANGE MUTUAL CASUALTY COMPANY

By James L. Mills, Counsel

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Court of Law and Chancery

Filed Aug. 28, 1967

By: ....., D. C.

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NOTICE

TO: Jack K. Moulton, p.d.
Board of Trade Building
Norfolk, Virginia 23510

James L. Miller, p.d.
1200 Maritime Tower
Norfolk, Virginia 23510

TAKE NOTICE that at 9:30 a.m. on January 3, 1968, counsel for plaintiff will appear in the Court of Law and

Chancery of the City of Norfolk to request that the attached Order to amend plaintiff's motion for declaratory judgment be entered.

CRITERION INSURANCE COMPANY

By R. M. Furness, Jr.
Of Counsel

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Court of Law and Chancery

Filed Dec. 19, 1967

By: ....., D. C.

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ORDER

This case came on to be heard on the motion to vacate order and to dismiss filed by the defendant, Grange Mutual Casualty Company, and was argued by counsel for said defendant and counsel for Criterion Insurance Company on September 5, 1967;

And it appearing to the court that as of September 5, 1967 there were pending in this court certain related personal injury cases in which no judgments have been entered but that as of said date certain of these cases were set for trial in October and December, 1967 and January of 1968;

And it further appearing to the Court that the proceedings in this case should be stayed for an additional reasonable period of time pending a disposition of the related personal injury cases, it is ADJUDGED. ORDERED and DECREED that the motion to vacate order and to dismiss of
page 58 } the defendant, Grange Mutual Casualty Company be, and the same hereby is, OVERRULED, to which action of the Court the said defendant, by counsel, duly excepts.

Enter this Order: 1/3/68

W.A.P., Judge

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ORDER

On motion of counsel for the Plaintiff, it is ORDERED that the Plaintiff be allowed to amend its motion for declaratory judgment to add Paragraph 12 as follows:

12. That on December 11, 1967, the case of Thomas C. Burleson, the driver of the Mangrum vehicle, against Melvin L. Langfitt was tried in the Court of Law and Chancery and the jury rendered a verdict in favor of the Plaintiff, Burleson, against the Defendant, Langfitt, in the sum of $1,500.00; judgment was entered on the verdict that date, which judgment has now become final and it has not been paid.

To which action of the Court the Defendant Grange Mutual Casualty Company objects and excepts.

Enter 1/3/68

W.A.P., Judge

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page 60 } February 19, 1968

Mr. James L. Miller
Williams, Cocke, Worrell & Kelly
Maritime Tower
Norfolk, Virginia

Mr. Robert M. Furniss, Jr.
Furniss and Davis
Plaza One
Norfolk, Virginia

Re: Criterion Insurance Company
v.
Grange Mutual Casualty Co., et al
Law Docket #9064

Gentlemen:

This will acknowledge receipt of your letters of January 18 and 25, 1968, and, after looking into this matter following our conference, the court is of the opinion that the motion of Grange Mutual Casualty Company to dismiss this action should be sustained.

You will recall that the court previously entered an order staying the proceedings, having ruled that until a judgment was obtained, the suit could not be maintained. At that time the court was of the opinion, and so indicated to counsel, that upon obtaining a judgment, the uninsured motorist carrier would be entitled to proceed against the tort feasor's liability carrier who had denied coverage. The Supreme Court of Appeals having now held to the contrary in *General Accident Fire and Life Assurance Corp., Ltd.* v. *Aetna Casualty and Surety Company,* Record No. 6523, in its opinion rendered January 15, 1968, it is obvious that this suit cannot be maintained. There can be no actual controversy or issue between these parties as the liability is contractual and arises under the Uninsured Motorist law after the liability of the uninsured motorist has been established, and the Supreme Court of Appeals having held that the uninsured motorist carrier has no recourse under the law against the liability carrier, the opinion of the court would be merely advisory.

page 61 } An order carrying out the foregoing and preserving the exceptions of counsel for the plaintiff may be presented at your convenience.

Yours very truly,

Walter A. Page, Judge

WAP:meg

Court of Law and Chancery

Filed Feb. 19, 1968

By: H. L. ....., D. C.

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ORDER

This action came on to be heard on the motion for declaratory judgment filed by the plaintiff; the several grounds of defense which ask the Court to dismiss this action and which has been filed by each of the defendants, except Fred W. McDaniel and Melvin L. Langfitt, each of whom is in default as to this action; the motion to dismiss filed by the

defendant, Grange Mutual Casualty Company, which was overruled by an order of this Court, entered on May 4, 1967; the motion to vacate order and to dismiss filed by the defendant, Grange Mutual Casualty Company, which was overruled by an order of this Court, entered on January 3, 1968; and was argued by counsel.

And it appearing to the Court upon a reconsideration of the said orders of May 4, 1967 and January 3, 1968 that the said motions to dismiss should be sustained for page 63 } the reasons stated in its opinion of February 19, 1968, it is ORDERED that the motions of the defendant, Grange Mutual Casualty Company, to dismiss this action be, and the same hereby are, granted.

And it is further ORDERED that the Clerk of this Court remove this case from the docket.

To all of which action of the Court the plaintiff, Criterion Insurance Company, by counsel, objects and excepts.

Enter this Order 3/1/68

W.A.P., Judge

James L. Miller, p.d.
R. M. Furniss, Jr., p.d.

Seen and excepted to:
Jack K. Moulton

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ASSIGNMENTS OF ERROR

(1) Under the law and the evidence in the case the Court erred in granting Defendant Grange Mutual Casualty Company's motion to dismiss the cause of action.

(2) The Court erred in holding that this declaratory judgment suit cannot be maintained; and it further erred in holding that there can be no actual controversy or issue between the Plaintiff and Grange Mutual Casualty Company.

(3) The Court erred in holding that its opinion in this declaratory judgment suit would be merely advisory and that

the uninsured motorist carrier, in this case the plaintiff has no recourse under the law against the liability carrier.

CRITERION INSURANCE COMPANY

By R. M. Furniss
Of Counsel

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Court of Law and Chancery

Filed Apr 9 1968

By: W. K. McCrory, D. C.

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ASSIGNMENTS OF CROSS-ERROR

The defendant, Grange Mutual Casualty Company, assigns as cross-error in the above case the action of the Court in overruling said defendant's motion to quash service of process by its order of March 15, 1965.

GRANGE MUTUAL CASUALTY COMPANY

By James L. Miller, Counsel

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Court of Law and Chancery

Filed Apr 22 1968

By W. K. McCrory, D. C.

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A Copy—Teste:

Howard G. Turner, Clerk.

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