

July 10, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-20686  
Summary Calendar

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ANNA MCGINNIS

Plaintiff - Appellant,

v.

ARCO PIPE LINE COMPANY;  
ATLANTIC RICHFIELD CO;  
BRITISH PETROLEUM CO;  
BP AMERICA INC; BP PIPE LINE CO;  
BP PIPELINES (NORTH AMERICA) (INC),

Defendants - Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
C.A. No. H-03-3105

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Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Appellant's husband, Glenn McGinnis, was tragically killed on his way home from work when a pine tree fell on the roof of his car. Appellant sued Mr. McGinnis's employer, Arco Pipe Line, under the Employee Retirement Income Security Act ("ERISA"). She sought to recover benefits she claims were due under his work-related accidental death benefits plan ("the Plan"). The district court

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\* Pursuant to 5th Cir. R. 47.5, this Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

granted summary judgment in favor of Arco Pipe Line.

The parties agree that the Plan provides benefits only if the employee was "at work." The issue presented in this appeal is whether Mr. McGinnis should be considered "at work" while he was commuting home. The underlying facts are not in dispute. Whether the phrase "at work" as used in the Plan includes a commute home raises a pure question of law. Our review is *de novo*. See *Nickel v. Estate of Estes*, 122 F.3d 294, 298 (5th Cir. 1997). We conclude that Mr. McGinnis was not "at work" at the time of his death, and we therefore affirm the grant of summary judgment against Appellant.

A benefits handbook given to employees explicitly provides, "The plan won't pay a benefit for any death that . . . occurs while you're commuting between your home and your regular place of work." In "ERISA parlance," an "employee benefits handbook [is] a 'Summary Plan Description' (SPD)." *Sunbeam-Oster Co. Group Benefits Plan for Salaried & Non-Bargaining Hourly Employees v. Whitehurst*, 102 F.3d 1368, 1370 (5th Cir. 1996). We have held that SPDs are binding. See *Hansen v. Continental Ins.*, 940 F.2d 971, 982 (5th Cir. 1991). Therefore, assuming *arguendo* that the term "at work" is ambiguous, and that it might include a commute home, the benefits handbook resolves any ambiguity in the Plan itself. Under the benefits handbook, Mr. McGinnis was not "at work" within the meaning of the Plan.

Appellant resists this conclusion by arguing that Mr. McGinnis meets the definition of "on duty" contained within certain Department of Transportation regulations. See 49 C.F.R. § 395.2. Setting aside potential differences between the concepts of "at work" and "on duty," the definition of "on duty" in those regulations does not govern the Plan. The "on duty" concept is delineated for the purposes of hours-of-service regulations promulgated by the Department of Transportation, not for death benefits plans. See generally 49 C.F.R. § 395.

Because Mr. McGinnis was commuting home rather than "at work" when he died, the district court correctly concluded that he was not entitled to death benefits under the Plan.

AFFIRMED.