



**Fourth Court of Appeals  
San Antonio, Texas**

**CONCURRING & DISSENTING OPINION**

No. 04-19-00119-CV

**INFINITY COUNTY MUTUAL INSURANCE COMPANY,**  
Appellant

v.

**Michael TATSCH,**  
Appellee

From the 216th Judicial District Court, Gillespie County, Texas  
Trial Court No. 12977  
Honorable N. Keith Williams, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice  
Concurring & Dissenting Opinion by: Luz Elena D. Chapa, Justice

Sitting: Rebeca C. Martinez, Justice  
Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice

Delivered and Filed: June 24, 2020

I concur in the majority's denial of the motion to dismiss this appeal. I respectfully dissent to the majority's resolution of the coverage dispute. The parties do not dispute the meaning of the terms in the mechanical breakdown exclusion; they only dispute how those terms apply to the facts of this case. Because Infinity County Mutual Insurance Company admits the loss caused mechanical breakdown or failure, and not vice versa, I would affirm the summary judgment.

## BACKGROUND

Michael Tatsch's truck broke down. Mechanics determined contaminated fuel damaged the fuel system and engine, which then caused the truck to break down. Tatsch's truck was covered by a comprehensive insurance policy with Infinity. Tatsch made a claim to Infinity for coverage of the damage to the fuel system and engine. Tatsch reported the mechanics first discovered the fuel system was damaged and that, after the fuel system was replaced, mechanics then discovered the engine was also damaged.

Infinity denied the claim. Citing a mechanical breakdown exclusion in the policy, Infinity explained its denial of the claim as follows:

We have concluded our investigation with regards to comprehensive coverage for the above referenced auto accident. . . . The vehicle damage occurred due to poor quality fuel being added to the vehicle which caused mechanical failure to your insured vehicle. There is an applicable exclusion in Your Texas Commercial Auto Policy that states we do not provide comprehensive coverage for damages resulting from mechanical failure.

This litigation followed.

## MECHANICAL BREAKDOWN EXCLUSION

To deny Tatsch's claim, Infinity relied on the following exclusion, "We do not cover [damage] . . . Resulting from or caused by . . . Mechanical . . . breakdown or failure." When, as here, coverage under the policy is undisputed, "the insurer then has the burden to plead and prove that the loss falls within an exclusion to the policy's coverage." *JAW The Pointe, L.L.C. v. Lexington Ins. Co.*, 460 S.W.3d 597, 603 (Tex. 2015). As the appellant, Infinity also has the burden to show reversible error. *See Sareen v. Sareen*, 350 S.W.3d 314, 317 (Tex. App.—San Antonio 2011, no pet.).

### **A. Infinity's Burden**

Applying the policy's definitions and majority's dictionary definitions, the mechanical breakdown exclusion plainly excludes coverage for damage to factory-installed equipment resulting from or caused by a machinery's mechanism's failure to function. The loss alleged is the physical damage to the engine and fuel injectors. Applying the burdens noted above, Infinity has the burden on appeal to show it conclusively established: (1) some mechanical part inside the truck failed to function properly; and (2) this part's failure to function properly is what actually resulted in or caused the physical damage to the fuel system and the engine. *See JAW The Pointe*, 460 S.W.3d at 603; *Sareen*, 350 S.W.3d at 317.

The majority seems to shift this burden to Tatsch without resolving whether Infinity has met its burden. The majority begins by rejecting each of Tatsch's arguments. First, the majority rejects Tatsch's argument that the loss *is* mechanical breakdown or failure, and does not result from and is not caused by mechanical breakdown or failure. Although the majority identifies what the mechanical breakdown is not, the majority does not identify what the mechanical breakdown is. Second, the majority holds Tatsch's argument that the contaminated fuel caused the damage to the engine and fuel system is irrelevant. Third, the majority rejects Tatsch's argument distinguishing between internal–external causes. Having rejected each of the arguments in Tatsch's appellee's brief, the majority adopts Infinity's position.

Infinity and the majority, however, do not identify any evidence conclusively establishing the engine and fuel injectors failed to function first and then, as a result of these failures, the engine and fuel injectors were damaged. Consequently, the majority renders judgment in Infinity's favor without requiring Infinity to satisfy its burden to show how “the loss . . . result[ed] from or [was] caused by . . . mechanical breakdown or failure.”

## **B. Analysis of Infinity's Arguments**

In its traditional motion, Infinity provided two grounds for summary judgment: (1) the contaminated fuel damaged the fuel system and engine in the process of those two mechanical parts breaking down; and (2) the contaminated fuel damaged the fuel system, which caused the fuel system to mechanically fail, which—in turn—damaged the engine.<sup>1</sup> There is no evidence in the record to support either assertion. Infinity cited to “Exhibit E, Claim Notes,” which confirms the damage to the fuel system was discovered before the damage to the engine. However, Infinity argues “an earlier event caused a later event merely because it occurred first. Stated simply, correlation does not necessarily imply causation.” *Jelinek v. Casas*, 328 S.W.3d 526, 533 (Tex. 2010).

Infinity's motion identified the fuel system and engine as the mechanical parts inside the truck that failed to function properly. But no evidence shows the contaminated fuel did not first cause the damage to the fuel system and engine, thereby resulting in those mechanical parts failing to work properly. Infinity failed to conclusively establish the damage to the engine and the fuel injectors “resulted from or [was] caused by” those mechanical parts failing to function properly. Infinity has not conclusively established that the loss is excluded from coverage, and that it is entitled to summary judgment as a matter of law.

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<sup>1</sup> The relevant portion of Infinity's summary judgment motion reads as follows:

Plaintiff told Infinity that the vehicle had broken down, and contaminated fuel had caused the damage to the fuel injectors, which subsequently lead to the damage to the engine. Exhibit E, Claim Notes. Therefore, Plaintiffs claim falls squarely within the policy exclusion. Is the claimed damage to Plaintiffs truck “resulting from”—the consequence or effect of—a mechanical breakdown or failure? Yes. The claimed damage to the fuel injectors and engine are clearly resulting from the mechanical breakdown and/or failure of those components. Additionally, the damage to the truck's engine was the consequence of damaged fuel injectors from the contaminated fuel. Accordingly, was the ultimate mechanical breakdown or failure of the fuel injectors a contributing cause that brought about the engine damages to Plaintiffs truck? Yes. At the very least, the damaged engine and fuel injectors, comprising Plaintiffs claim, are the result of mechanical failure. At the very most, the damage to the engine was caused by the failed fuel injectors, which acted as a contributing cause that brought about Plaintiffs claim.

## B. Analysis of Tatsch’s Arguments

In its summary judgment motion, Tatsch argued Infinity “admitt[ed] in their denial letter that contaminated fuel caused the mechanical failure.” Infinity’s letter states that, after completing its investigation, it concluded: “The vehicle damage occurred due to poor quality fuel being added to the vehicle which caused mechanical failure to your insured vehicle.” This statement admits: (1) contaminated fuel damaged the engine; and (2) mechanical failure was the last event in the causal chain:

**Facts of this Case**  
Contaminated fuel → Damage → Mechanical Breakdown or Failure

As written, however, the exclusion would seem to apply only if the contaminated fuel caused mechanical breakdown or failure, which caused the damage:

**When the Exclusion Applies**  
Contaminated fuel → Mechanical Breakdown or Failure → Damage

The exclusion here does not apply in instances when mechanical breakdown or failure is the last event in the causal chain, and Infinity admitted mechanical failure was the last event in the causal chain. Thus, the undisputed facts conclusively establish the exclusion does not apply.

By merely noting the undisputed existence of mechanical breakdown, the majority adopts Infinity’s position that, so long as mechanical breakdown exists somewhere in the causal chain, it does not matter whether the damage caused the mechanical breakdown or whether the mechanical breakdown caused the damage. But this requires rewriting Infinity’s policy to say, “We do not cover loss . . . ~~Resulting from or caused by~~ **when there is** . . . Mechanical . . . breakdown or failure,” and we may not insert language or provisions into a policy under the guise of construction. *See Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 753 (Tex. 2006).

Additionally, the majority's holding conflicts with *State Farm Lloyds v. Marchetti*, 962 S.W.2d 58 (Tex. App.—Houston [1st Dist.] 1997, pet. denied). The *Marchetti* court held the existence of the excluded cause in the causal chain is irrelevant unless that cause is the instrumentality directly producing the damage to the insured property. *Id.* at 60–61. There, flood water (the excluded cause) caused an excess of surface water (non-excluded clause), which damaged a house and personal items. *See id.* Unlike *Marchetti*, the majority holds the mere existence of an excluded cause somewhere in the causal chain triggers the exclusion. To be consistent with *Marchetti*, this court would have to identify evidence establishing the mechanical breakdown of the engine and fuel injectors is what directly produced the damage to that equipment. As explained above, there is no such evidence in this record, and Infinity admitted the damage caused the breakdown, not vice versa.

#### CONCLUSION

The trial court properly applied the plain language of the exclusion to the undisputed facts of this case without judicially modifying Infinity's policy. Because the majority reverses this decision without identifying any evidence showing the failure of the fuel injectors and engine to function properly is what produced the damage to those parts, and because Infinity admitted the contaminated fuel first caused the damage, which ultimately resulted in mechanical breakdown or failure, I respectfully dissent to this part of the court's judgment.

Luz Elena D. Chapa, Justice