

2000

IML Freight, Inc., Garrett Freighlines, Inc.; and  
Transcon Lines v. C.N. Ottosen, Commissioner of  
Insurance of the State of Utah, State Tax  
Commission of the State of Utah, and Vernon  
Romney, Attorney General of the State of Utah:  
Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH, FEB 1975

I.M.L. FREIGHT, INC.; GARRETT  
FREIGHTLINES, INC.; and  
TRANSCON LINES,

Plaintiffs and Respondents,

vs.

C. N. OTTOSEN, Commissioner of  
Insurance of the State of Utah,  
STATE TAX COMMISSION of the State  
of Utah, and VERNON ROMNEY,  
Attorney General of the State  
of Utah,

Defendants and Appellants.

BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

Case No.

13973

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RESPONDENTS' BRIEF

---

Appeal from the Judgment of the Third  
District Court for Salt Lake County  
Hon. James S. Sawaya

---

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FILED

MAY 16 1975

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IN THE SUPREME COURT OF THE STATE OF UTAH

---

I.M.L. FREIGHT, INC; GARRETT  
FREIGHTLINES, INC., and  
TRANSCON LINES,

Plaintiffs and Respondents,

vs.

C. N. OTTOSEN, Commissioner of  
Insurance of the State of Utah,  
STATE TAX COMMISSION of the State  
of Utah, and VERNON ROMNEY,  
Attorney general of the State of  
Utah,

Defendants and Appellants.

Case No.

13973

---

RESPONDENTS' BRIEF

---

STATEMENT OF THE NATURE  
OF THE CASE

This is a declaratory judgment action to determine the relationship between the Utah No Fault Act and the Utah Workmen Compensation Act; and to also determine the legality of the Insurance Commissioner's application of the Utah No Fault Act to accidents occurring outside of the State of Utah.

#### DISPOSITION IN THE LOWER COURT

This matter was tried before the Court, sitting without a jury. The Court found that the exclusive and only remedy that an employee has against his employer, where injury occurs while in the course and scope of employment, is Workmen Compensation and that the employee has no remedy under the Utah No Fault Act against his employer.

The Trial Court further held that the Utah No Fault Act has no application to accidents which occur outside of the State of Utah and that the Department of Insurance's regulations to the contrary have no legality.

#### RELIEF SOUGHT ON APPEAL

Respondents request this Court to affirm the judgment of the lower Court.

#### STATEMENT OF FACTS

The Utah No Fault law became effective on January 1, 1974. (U.C.A. 31-41-1 et.seq.) Pursuant to the said Act, the Utah State Department of Insurance promulgated certain rules and regulations. (Exhibits 1 and 2.)

The Utah Workmen Compensation law which has been in effect since 1917, states that Workmen Compensation is the exclusive remedy of an employee against his employer and shall be in place of any and all other civil liability whatsoever, at common law or otherwise. (U.C.A. 35-1-1 et.seq.)

Respondents are interstate motor carriers employing numerous truck drivers. Respondents have received numerous claims by their employees against them claiming No Fault coverage benefits. Inasmuch as the statutes provide for severe penalties for non-compliance with the No Fault Act, Respondents filed the said action for declaratory relief.

The Department of Insurance claims that the Respondents' employees are covered by the No Fault Act and are entitled to the remedies of the No Fault Act even against their own employers regardless of the Workmen Compensation Statutes.

Respondents claim that their employee-drivers have no rights under the No Fault Act against their employers but that their exclusive and only remedy is Workmen Compensation.

In addition, the Insurance Commissioner has promulgated regulations applying the Utah No Fault Law to accidents occurring outside of the State of Utah as well as those within the state.

Respondents' claim that the No Fault Act applies only to those accidents occurring within the State of Utah.

Appellants further claim the Trial Court erred in not requiring the Respondents to exhaust their administrative remedies before seeking relief from the Court. Appellants, at a date prior to the trial, moved for a dismissal upon the same grounds. The Motion for Dismissal was denied. Appellants petitioned the Supreme Court for an interlocutory appeal. The Petition was denied. Appellants renewed their Motion to Dismiss



at the time of trial. The motion was denied.

Respondents claim that the Trial Court did not err in denying such motion in that this matter concerns a controversy over issues of law, and the application, interpretation and construction of statutes, and the excessive use of administrative power or abuse thereof.

#### ARGUMENT

##### POINT I.

THE TRIAL COURT DID NOT ERR IN DENYING DEFENDANTS' MOTION TO DISMISS WHEREIN DEFENDANTS CLAIMED THAT THE PLAINTIFFS HAD FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

While it is true that a person must exhaust his administrative remedies before resorting to the Courts, this is not true in controversies over issues of law, interpretation or construction of statutes, questions of constitutionality of statutes, or the excess use of administrative power or abuse thereof. These particular matters are the province of the judiciary and for Court determination.

The general rule is stated in 2 AmJur 2d Section 654, Administrative Law, as follows:

It is for the Courts, not the administrative agencies, to lay down the governing principals of law and to determine what action is within or without the law. This is a judicial function and judicial review of questions of law may be held required by the Constitution and beyond the legislative power to impair. Accordingly, with few exceptions, Courts will review challenged action of an administrative agency to determine if it conforms with the law or is affected by an

error of law or if the law has been properly applied by the agency and it is held that questions of law, at least 'clear-cut' questions of law are reviewable or are for determination by the Court generally upon its own independent judgment but according appropriate weight to the decision of the administrative agency.

The same source at Section 656 states:

The interpretation of a statute or regulation involves a question of law and statutory construction is the function of the Courts. . . . The Court will determine the meaning of the words of a statute and its intent especially where the matter involves an accommodation between conflicting policies.

In Great Northern Railroad Company vs. Merchants' Elevator Company, 259 U.S. 285, 42 S.Ct. 477, 66 L.Ed. 943, the U. S. Supreme Court held that a Court had jurisdiction to construe a tariff prior to consideration of the disputed question of construction by the Interstate Commerce Commission. In that case, the Court stated:

. . . Every question of the construction of a tariff is deemed a question of law; and where the question concerns an interstate tariff it is one of Federal Law. If the parties properly preserve their rights, a construction given by any Court, whether it be federal or state, may ultimately be reviewed by this Court either on writ of error or on writ of certiorari; and thereby uniformity in construction may be secured. Hence, the attainment of uniformity does not require that in every case where the construction of a tariff is in dispute, there shall be a preliminary report to the Commission.

In Reynolds vs. United States, 292 U.S. 443, 54 S.Ct. 800, 78 L.Ed 1353, the U. S. Supreme Court held that a Court may determine a question which is within the sole authority of an administrative officer where the facts are undisputed and indisputable and, as a matter of law, permit of but one conclusion,

so that a contrary conclusion by the officer would be arbitrary and not binding upon the Courts.

In regards to rules and regulations promulgated by an administrative agency, the general rule is stated in 2 AmJur 2d Section 588, Administrative Law, as follows:

Regulations of an administrative agency are addressed to and set a standard of conduct for all to whom their terms apply, and if valid operate as such in advance of the imposition of sanctions upon any particular individual, and have the force of law before their sanctions are evoked as well as after. Accordingly, it is recognized that a determination of administrative authority may be made at the behest of one so immediately and injured by a regulation claimed to be invalid that his need is sufficiently compelling to justify judicial intervention even before the completion of the administrative process. (Citing: Eccles vs. People's Bank, 333 U.S. 426, 92 L.Ed. 784, 68 S.Ct 641.)

#### DECLARATORY JUDGMENT PROPER REMEDY

A Declaratory Judgment Proceeding is the recognized remedy for the determination, interpretation and construction of administrative rules and regulations as well as statutes.

22 AmJur 2d Section 31, Declaratory Judgments, states:

Declaratory Judgment Proceedings have been considered particularly useful in determining the rights of the individual vis-a-vis public authorities and administrative agencies. A judicial determination as to the power of public regulatory agencies and the validity of their rules and regulations enables the private individual to avoid uncertainty as to his rights and duties and to avoid the risks of civil and criminal liability without requiring him to use the more cumbersome writs of certiorari mandames quowarranto, or prohibition. . . accordingly,

Declaratory Judgment Procedure is available to determine the powers and duties of various governmental agencies and officers, as well as to determine the validity and construction of administrative regulations and resolutions. . . .

In Namro Holding Corporation vs. New York, 235 NYS 2d 744, it was held that the administrative remedy of appeal from an Order of the Department of Buildings did not preclude a declaratory action challenging the applicability of rules adopted by the administrative board as to exits of buildings.

#### UTAH LAW

Utah Law is consistent with the general law stated above. In fact, one is given a statutory right to pursue declaratory relief where his rights have been affected by a statute, ordinance, contract or franchise. In Utah Code Annotated 78-33-2, concerning Declaratory Judgments, it states:

Any person interested under a deed, will, or written contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

In Utah Hotel Company vs. Industrial Commission, 107 Utah 24, 151 P.2d 467, the Utah Supreme Court quoted with approval the following from Federal Administrative Law by Von Baur, Section 73, 74, as follows:

The nature of the administrative process in executing a statutory scheme requires that

administrative agencies not only determine the administrative questions involved, but apply the law in the first instance as well-- that is, that they also venture an initial decision on the judicial questions. Otherwise, as a practical matter, the agencies could not function. . . . A 'Decision' or 'Finding' by an administrative agency upon a judicial question is never a binding decision, for under the doctrines of supremacy of law and the separation of powers a binding decision of a question of law affecting private rights may only be made by an appropriate Court acting judicially. Thus, although as a practical or procedural matter an administrative agency must venture a decision upon such a question of law, such questions are always open for independent judgment of an appropriate Court acting judicially. . . . And a binding decision on a simple judicial question, such as a question of statutory construction, may only be made by an appropriate Court acting judicially.

In Union Pacific Railroad Company vs. Structural Steel and Forge Company, 9 Utah 2d 318, 344 P.2d 157, the railroad brought an action against the shipper of steel goods over a rate tariff controversy. The railroad made a motion to submit the questions of tariff interpretation to the Interstate Commerce Commission which Order was granted. The Supreme Court of Utah held that this was error and that the question was for the Court. The Supreme Court stated:

Since the words in the tariff are used in their ordinary meanings, their construction is a matter of law; uniformity in that construction can be guaranteed by the Supreme Court. . . . The State Court can apply the legal construction to a state cause of action.

Parker vs. Rampton, 28 Utah 2d 36, 497 P.2d 848, was an action for a Declaratory Judgment as to the legality of voluntary sterilization. The argument was made that the plaintiff

had not yet been damaged so could not seek action as to the applicability of the statute to them. However, the Supreme Court held otherwise stating:

As to Declaratory Judgment, the very purpose of that statute was to provide a means for securing an adjudication without the necessity of someone having to suffer damage or get into serious difficulty before he could seek to have his rights determined in Court.

#### APPLICABILITY OF LAW TO CASE AT BAR

The case at bar involves pure questions of law and no questions of fact. The Insurance Commissioner interprets the Utah No Fault Act to require coverage of plaintiffs' "fleet" vehicles and, therefore, their occupants, who, in every case, are employees of Respondents. Respondents claim that such interpretation cannot be made since the Utah Workmen Compensation Statutes clearly declare Workmen Compensation to be the exclusive remedy and to be "in place of any and all other civil liability whatsoever, at common law or otherwise. . . ." And that ". . . no action at law may be maintained against an employer. . . based upon any accident, injuries or death of an employee."

Also, the case at bar concerns the unauthorized extension of the No Fault Act to out-of-state accidents. The Insurance Commissioner has promulgated that the Utah No Fault Act extends to accidents which occur outside of the State of Utah as well as in and that all persons must purchase endorsements to their No Fault Insurance policies providing such

out-of-state coverage. However, Respondents allege that the Utah No Fault Act specifically restricts No Fault application to accidents which occur inside of the State of Utah and, therefore, the Insurance Commissioner has promulgated a rule far beyond the statute and beyond his authority.

The above conflicts are clearly conflicts of law and deal with issues of law. These issues are for judicial determination by the Court.

#### RESPONSE TO APPELLANTS' CITED AUTHORITIES

The Appellants cite Utah Insurance Code 31-4-1 for the proposition that a hearing must be held by the Insurance Commissioner. However, that Code provides only that the Insurance Commissioner "may" hold a hearing which he deems proper. It states that he "shall" hold a hearing only if required by a provision of the Code or upon written demand by any person aggrieved by the act of the Commissioner. In any case, the present issues are not proper issues to be determined by an administrative body but only by a judicial Court.

Appellants cite Pacific Intermountain Express Company vs. State Tax Commission, 7 Utah 2d 15, 316 P.2d 549, and Walker Bank & Trust Company vs. Taylor, 15 Utah 2d 234, 390 P.2d 592, apparently for the proposition that exhaustion of administrative remedies must be made. However, Appellants

failed to point out that in the Pacific Intermountain Express case there was a statute which gave the Supreme Court of Utah the exclusive and sole jurisdiction to review an administrative review and, furthermore, the later of the two cases, Walker Bank & Trust Company vs. Taylor, supra, specifically recognized that questions of law were to be determined by a Court and that an administrative hearing was not necessary in such cases. The Supreme Court stated:

We agree that, under most circumstances, exhaustion of administrative remedies is required before legal action may be taken. However, this only applies where the discretion of an administrative officer or body, acting in pursuant to statutory directive, is in question. It does not apply when, as here, the administrative officer or body, acts without the scope of his or its defined statutory authority. The question here involved, being strictly one of law, is for the Courts and an appeal to the Board of Examiners would have been futile and useless.

It is respectfully submitted that the issues at bar concern strictly questions of law and actions by the administrative officer or body beyond the scope of their defined statutory authority, and, therefore, these questions were for determination by the Courts.

## POINT II.

THE TRIAL COURT DID NOT ERR IN RULING THAT AN EMPLOYEE'S EXCLUSIVE REMEDY AGAINST HIS EMPLOYER IS WORKMEN COMPENSATION AND THAT AN EMPLOYEE HAS NO REMEDY AGAINST HIS EMPLOYER UNDER THE NO FAULT ACT.

Workmen Compensation, by statute, is the exclusive and only remedy an employee has against its employer, when injured



in the course and scope of his employment. And, an employee cannot maintain any civil action of any kind against his employer or fellow employee. Utah Code Annotated 35-1-60 reads as follows:

Exclusive remedy against employer, or officer, agent or employee - Occupational disease excepted.- The right to recover compensation pursuant to the provision of this title for injuries sustained by an employee, whether resulting in death or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent or employee of the employer and the liabilities of the employer imposed by this act shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to such employee or to his spouse, widow, children, parents dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated or incurred by such employee in the course of or because of or arising out of his employment, and no action at law may be maintained against an employer or against any officer, agent or employee of the employer based upon any accident, injury or death of an employee. Nothing in this section however, shall prevent an employee (or his dependents) from filing a claim with the Industrial Commission of Utah for compensation in those cases within the provisions of the Utah Occupational Disease Disability Act, as amended. (emphasis added)

Therefore, in Utah, specifically by statute, an employee cannot sue his employer at common law or otherwise, nor maintain any action at law, but the liability of the employer is in place of all other civil liability. The Compensation Act is the exclusive remedy of an employee who is injured on the job.

This same principle is recognized universally by all jurisdictions having Workmen Compensation laws. 3 Larson, The Law of Workmen Compensation, Section 65.00 (1974), which work,

incidentally, has been referred to by the Utah Supreme Court as the "recognized authority on the subject," (Kennecott vs. Anderson and Industrial Commission, 30 Utah 2d 102, 514 P.2d 217) states in Volume III at Section 65.00 the following:

The compensation remedy is exclusive of all other remedies by the employee or his dependents against the employer and insurance carrier for the same injury, if the injury falls within the coverage formula for the Act. . ."

This same principle is recognized where other statutory law may give protection in absence of Workmen Compensation.

The same authority states in Section 65.10 at p.41:

The exclusiveness rule relieves the employer not only of such common law liability, but also of statutory liability under such enactments as a State or Federal Employer's Liability Act, a Defective Machinery Act, an Automobile Owner's Liability Act, or a Scaffold Act. Attempts to get around the exclusiveness bar have also been unsuccessful when they took the form of asserting that the action against the employer based on contract rather than tort, or that it was an action in rem against a ship rather than an action in personam against the employer.

The above is also the rule within the Federal system where the question often arises as to whether or not a Federal employee may sue the United States under the Federal Torts Claims Act (or other similar acts) or, if such employee is compelled to find remedy under the Federal Employee's Compensation Act, the latter being similar to Utah's Compensation Act. Those cases all turn on whether or not the employee was in the course and scope of his Federal employment at the time of his injury. If he was, then his only remedy would be Workmen Compensation. But if he was not

on the job at the time, then he can sue under the other applicable Federal Acts. The Federal Employee's Compensation Act specifically states the same to be the "exclusive" remedy of a Federal employee against his employer, the Federal Government.

In United States vs. Demko, 385 U.S. 149, 87 S.Ct. 382 (1966), the United States Supreme Court aptly clarifies the issue. In that case, a Federal prisoner, who performed work within the Federal Compensation Act, was injured and sued the Federal Government under the Federal Torts Claims Act. But, the United States Supreme Court held that such person's only remedy was the Compensation Act. An argument was made in that case that the Federal Torts Claims Act had been passed twelve years after the Compensation Act and was meant to supplement or change it. However, the U.S. Supreme Court disagreed and stated:

Indeed, to hold that the 1946 Federal Tort Claims Act was designed to have such a supplemental effect would be to hold that injured prisoners are given greater protection than all other government employees who are protected exclusively by the Federal Employee's Compensation Act, a congressional purpose not easy to infer.

In Granada vs. United States, 356 F.2d 837 (C.A.2d 1966), a case similar to the Demko case, supra, the Court of Appeals stated:

And it would now seem to be well settled that if a remedy is available under the Federal Employee's Compensation Act for injuries sustained in the course of employment, this remedy is exclusive, and no concurrent remedy exists under the Federal Torts Claims

Act, the Jones Act, the Suits in Admiralty Act, or the Public Vessels Act.

In United States vs. Browning, 359 F.2d 937 (C.A.10th Utah, 1966), a Federal employee was injured in an automobile accident with another government vehicle, after her working hours, and while she was leaving Hill Air Force Base. She sued the Federal Government under the Federal Torts Claims Act claiming that at the time of the accident she was not in the scope of her employment. The entire case depended upon the factual evidence as to whether or not she was in the scope of her employment at the time. If she was in the scope of her employment, her exclusive remedy was Workmen Compensation. If she was not in the scope of her employment, her remedy was that remedy available to any other person, in that case, the Federal Torts Claims Act. The Court stated:

There would appear to be no question but that the Federal Employee's Compensation Act is the exclusive remedy for employees who come within its provisions. . . .

#### UTAH LAW

Utah's Workmen Compensation Act is similar to the Federal Employee's Compensation Act as to exclusiveness of remedy. In fact, the Utah Act is even more clear. The said Act states essentially that:

(it) shall be the exclusive remedy against an employer. . . or employee. . . .

(the) liabilities of the employer imposed by this act shall be in place of any and all other

civil liability whatsoever, at common law or otherwise.

no action at law may be maintained against an employer. . .or employee. (U.C.A. 35-1-60)

The Federal Compensation Act simply states that the ". . .liability of the United States. . .is exclusive and instead of all other liability of the United States. . . ." 5 U.S.C.A., Section 8116(c).

In Utah-Idaho Central Railroad Company vs. Industrial Commission of Utah, 84 Utah 364, 35 P.2d 842 (1934) a railroad employee was injured in a rail accident. He sued his employer under the Federal Employer's Liability Act, claiming he was working interstate at the time. The Federal Government claimed he was working intrastate only, and his exclusive remedy was Workmen Compensation. It was argued that since the employee was also seeking Workmen Compensation he was estopped from suing the Federal Government. The Utah Supreme Court, consistent with the principles stated above, recognized that the employee had only one right and the only question was "which right." The Court stated:

Pope here did not have two remedies consistent or inconsistent or co-existing on the same state of facts, or a choice between different modes of procedure and relief allowed by the law on the same state of facts. If his injury occurred while engaged in interstate commerce, he had but one legal remedy and that under the Federal Employer's Liability Act. On the other hand, if his injury was occasioned while engaged in intra-state commerce, as alleged by the company. . . then his only legal remedy was under the Workmen Compensation Act.

The Court then concluded that his only remedy was Workmen Compensation under the facts.

Therefore, the law is quite clear that Workmen Compensation is the exclusive and only remedy that an employee has against his employer when in the scope of employment, and this is true as to other statutory rights as well as common law rights. This is what the Utah Statute specifically states and this is what the law of Workmen Compensation stands for in the State of Utah and in other jurisdictions.

#### UTAH NO FAULT ACT

The Utah No Fault Act makes no exception to the above rule. That Act, U.C.A. 31-41-1 et.seq., does not replace, amend or change the Workmen Compensation laws of Utah in any way. That Act does not tamper with the exclusiveness of remedy provision of the Workmen Compensation laws in any way. That Act basically provides that the owner of a motor vehicle must provide coverage to cover the insured and persons occupying his vehicle and pedestrians struck by his vehicle pursuant to the No Fault Act.

However, Appellants claim that the No Fault Act affects the relationship between employees and their employers, the Workmen Compensation laws of Utah, and eliminates the exclusiveness of Workmen Compensation. Appellants place their entire argument upon one section of the No Fault Act, Utah Code Annotated, 31-41-7(3) which states:

(3) The benefits payable to any injured person under Section 31-41-6 shall be reduced by:

(a) Any benefits which that person receives or is entitled to receive as a result of an accident covered in this Act under any Workmen Compensation plan or any similar statutory plan;. . .

However, the meaning of the above section is quite clear when kept within the context of the entire No Fault Act and within the context of the Workmen Compensation Act. There will be occasions when an employee is injured, while on the job, which will entitle him to Workmen Compensation from his own employer, as well as No Fault benefits from another source. For instance, if a truck driver is making a delivery and while crossing a street is hit by a car, the delivery man is entitled to Workmen Compensation from his own employer, but is also entitled to No Fault benefits from the owner of the car which hit him. And, according to the above quoted provision of the No Fault law, while the delivery man may collect Workmen Compensation from his employer and also No Fault benefits from the owner of the car which hit him, the No Fault benefits will be reduced by the Workmen Compensation benefits received. This is the purpose of the above section. The above section does not say that the delivery man may recover No Fault from his own employer. This would be contrary to the letter and spirit of the Workmen Compensation Act and its exclusive remedy provisions.

This reasoning is verified by the very next section found in the No Fault Act, Utah Code Annotated, 31-41-9, which

states:

(1) No person for whom direct benefit coverage is provided for in this Act shall be allowed to maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident except where there has been caused by this accident any one or more of the following:

- (a) Death;
- (b) Dismemberment or fracture;
- (c) Permanent disability;
- (d) Permanent disfigurement; or
- (e) Medical expenses to a person in excess of \$500.00.

(2) The owner of a motor vehicle with respect to which security is required by this Act who fails to have such security in effect at the time of an accident shall have no immunity from tort liability and shall be personally liable for the payment of the benefits provided for under Section 31-41-6.

If No Fault is said to replace or change the Workmen Compensation Act as claimed by Appellants, then the above section would mean that an employee could always sue his employer in any case for "death, dismemberment or fracture, permanent disability, permanent disfigurement, or where medical expenses to that employee are in excess of \$500.00." This certainly was not the intention of the legislature.

Furthermore, by paragraph (2) of the above quoted section, if the employer failed to provide No Fault Insurance, he would then "have no immunity from tort liability." This certainly was not the intention of the legislature as pertaining to employers.



Furthermore, to apply No Fault to plaintiff's employees would be discriminatory against other employees. Such application would mean that the employee who is injured while working on the dock is limited to Workmen Compensation benefits while the truck driver who is injured while sitting in his truck while it is being unloaded, would be allowed the benefits of No Fault which far exceed the benefits of Workmen Compensation. This would be discriminatory and probably unconstitutional.

The Utah No Fault Act cannot apply against employers in behalf of employees who are covered by Workmen Compensation for the following basic reasons:

1. To hold otherwise would run contrary to the Workmen Compensation Statutes of the State of Utah and the long historical precedence set by case law within the State of Utah, within the Federal system, and within other states.
2. To hold otherwise would allow an employee to sue his employer in any case for death, dismemberment, fractures, permanent disability, permanent disfigurement, or whenever medical expenses exceeded \$500.00.
3. To hold otherwise would allow different employees working for the same employer to receive different and unequal benefits. A truck driver would receive higher benefits than the dock worker. Such would be discriminatory and unconstitutional.
4. To hold otherwise would allow an employee to sue his employer if the employer did not provide No Fault coverage.
5. To hold otherwise would essentially eliminate the Workmen Compensation system as it applies to truck drivers or any other employees who drive for their employers since all such employees would seek the higher benefits of the No Fault Act.
6. To hold otherwise would place the jurisdiction of such cases between employees and employers in the

District Courts of the state wherein now the District Courts have no jurisdiction in Workmen Compensation matters since such rests with the Industrial Commission with appeal directly to the Utah Supreme Court.

It is respectfully submitted that an employee injured in an accident, while on the job, where his employer has provided Workmen Compensation coverage, has, as his only and exclusive remedy against his employer, the provisions of the Workmen Compensation Act.

### POINT III.

THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE NO FAULT ACT HAD NO APPLICATION TO ACCIDENTS OCCURRING OUTSIDE OF THE STATE OF UTAH AND THAT THE INSURANCE COMMISSIONER HAD NO POWER TO EXTEND SUCH APPLICATION TO SUCH ACCIDENTS.

The No Fault Act itself limits the application of the Act to accidents which occur within the State of Utah. The statute reads at Section 31-41-7 as follows:

(1) The coverages described in Section 31-41-6 shall be applicable to:

(a) Personal injuries sustained by the insured when injured in an accident in this state involving any motor vehicle.

(b) Personal injuries arising out of automobile accidents occurring in this state sustained by any other natural person while occupying the described motor vehicle with the consent of the insured or while a pedestrian if injured in an accident involving the described motor vehicle.

Therefore, the No Fault Act limits its applications to accidents which occur "in this state."

The Insurance Commissioner in its bulletin dated February, 1974 (Exhibit D-2) illegally expanded coverage to accidents occurring outside of the State of Utah and required insurance endorsements in regards thereto. The bulletin stated:

To those automobile insurance companies that have not extended coverage against injury resulting from accidents that happen outside the State of Utah, it will be required that the out-of-state extension endorsement of P.I.P. coverages be included as part of their No Fault coverage.

Clearly, the above announcement by the Insurance Commissioner is not authorized by the statute, and goes beyond the limitations of the statute. The statute clearly limits the application of the No Fault Act to accidents which occur within the State of Utah. If such change is to be made to expand such coverage, such must come from the state legislature.

73 C.J.S. Public Administrative Bodies and Procedures, Section 59 states:

Administrative officers and agencies must pursue their authority and act within the scope of their powers. There exercise of authority must be authorized by, and be in accordance with the requirements of, controlling provisions and principals of law. Such officers and agencies are bound by the terms of the statutes or regulations granting them their powers, and are required to act in accordance therewith and to keep within the limits of the powers and authority granted them. They are without power to act contrary to the provisions of the law or the clear legislative intendment, or to exceed the authority conferred on them by statute. They have no power to authorize or acquiesce in the doing of a thing unauthorized or forbidden by statute, and they may not violate a statutory mandate even though acting within the general jurisdiction conferred on them by statute.

Neither the theoretical nor the practical effect of a proper adherence to the law should be of concern to administrative officers or agencies. They must follow statutory established standards and not their ideas of what would be charitable or equitable, and they may not ignore or transgress the statutory limitations on their power, even to accomplish what they may deem to be laudable ends. Their actions are valid only if they are within the limits of the powers granted them by the legislature; acts or orders which do not come clearly within the powers granted or which fall beyond the purview of the statute granting the agency or body its powers are not merely erroneous, but are void. However, the acts of a board in carrying out its authority should be liberally construed.

In Piercey vs. Civil Service Commission of Salt Lake City, 116 Utah 135, 208 P.2d 1123, the Utah Supreme Court recognized the general law as stated above. In that case, the Civil Service Commission had statutory authority to hear appeals in regards to persons "removed from office" or "discharged" from office or employment. In that case, a Salt Lake City fireman submitted his resignation under some pressure after having been arrested for drunkenness. He later attempted to withdraw his resignation and then appealed to the Civil Service Commission. The Civil Service Commission held a hearing and ordered the fireman to be restored to his employment and ordered that his letter of resignation be voided. However, the Utah Supreme Court reversed the Civil Service Commission holding that the Commission did not have power in this regard. The Civil Service Commission derived its authority to hear appeals from a statute which read:

All persons in the classified civil service may be removed from office or employment by the head of the department for misconduct, incompetency or

or failure to perform his duties or failure to observe properly the rules of the department, but subject to appeal by the aggrieved party to the Civil Service Commission. Any person discharged may within five days from the issuing by the head of the department of the order discharging him appeal therefrom to the Civil Service Commission, which shall fully hear and determine the matter. The discharged person shall be entitled to appear in person and to have counsel and a public hearing. The finding and decision of the Civil Service Commission upon such hearing shall be certified to the head of the department from whose order the appeal is taken, and shall be final, and shall forthwith be enforced and followed by him.

The Utah Supreme Court in holding that the Civil Service Commission had gone beyond its power stated:

It is evident from what has been said that the Civil Service Commission was without jurisdiction to hear and determine the appeal brought by Fox because he resigned and was not removed from office or employment. . . the statute does not give the Commission the power or right to determine whether a person in the Civil Service who has resigned from his office or employment did so because of duress, coercion, or fear, brought upon him by the head of the department in which he is employed. The Civil Service Commission, like other tribunals of limited jurisdiction, can exercise only such powers as are conferred upon it by statute. (Piercey vs. Civil Service Commission of Salt Lake City, supra.)

The No Fault Act, itself, gives the insurance department the power to "promulgate such rules and regulations as may be necessary for the purposes of this Act." U.C.A. 31-41-12.

The purposes of this Act are to provide No Fault coverage for insureds or other natural persons occupying an insured vehicle when injured in an accident in this state. The Insurance Commissioner may promulgate such rules and regulations as are reasonable unto this end but no further. The Insurance Commissioner does

not have the power to extend or expand the type of coverage, or the amounts to be realized, or the persons to be covered, or the limitations, or the territorial area to be covered. The Insurance Commissioner and Department of Insurance are without power to expand coverage to accidents outside of the State of Utah inasmuch as the state legislature in the passage of the No Fault Act stated such coverage to apply to accidents occurring in the State of Utah.

If a person desires insurance coverage for accidents occurring outside of the State of Utah, such can be purchased from his insurance agent.

It is respectfully submitted that the No Fault Act is limited to accidents occurring within the State of Utah.

#### CONCLUSION

It is respectfully submitted that an employee who is injured on the job and who is protected by Workmen Compensation, has, as to his employer, only the exclusive remedy of Workmen Compensation and such employee has no remedy under the No Fault Act as to his employer.

It is further submitted that the No Fault Laws of Utah apply only to accidents which occur within the State of Utah.

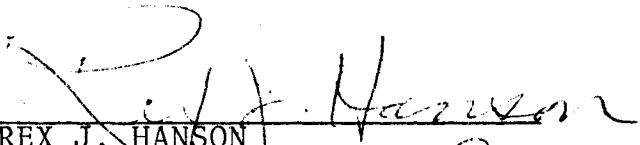
It is further submitted that this matter was one for judicial determination.

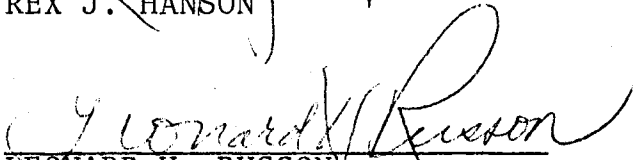
The lower Court's judgment should be affirmed.

DATED this 15<sup>th</sup> day of May, 1975.

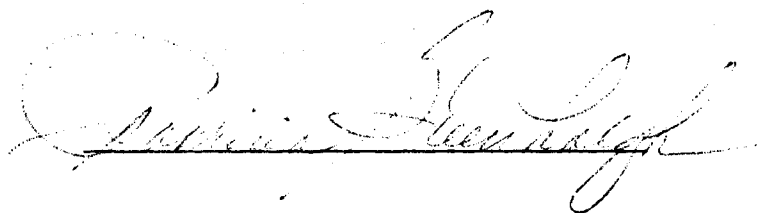
Respectfully submitted,

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MAILED two copies of the foregoing RESPONDENTS' BRIEF  
this 15<sup>th</sup> day of May, 1975, to William G. Gibbs, Attorney  
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WILLIAM G. GIBBS