

1975

Mountain States Steel Company and Argonaut Insurance Company v. Industrial Commission of Utah, Liberty Mutual Insurance Company, and Jerry Allen Taylor : Brief of Defendant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Richard H. Moffat; John L. Young; Attorneys for Defendants.

Robert W. Brandt; Jon J. Bunderson; Brandt, Miller, Nelson and Christopherson; Attorney for Plaintiff; Vernon B. romney; Attorney for defendant; Jerry Allen Taylor; Appearing pro se.

Recommended Citation

Brief of Appellant, *Mountain States Steel v. Industrial Commission of Utah*, No. 13872.00 (Utah Supreme Court, 1975).
https://digitalcommons.law.byu.edu/byu_sc1/113

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

DOCUMENT

FU

5.9

9

DOCKET NO.

U.S. SUPREME COURT

BRIEF

COURT
UTAH

RECEIVED

MOUNTAIN STATES STEEL COMPANY and ARGONAUT
INSURANCE COMPANY

LAW LIBRARY

Plaintiffs,

DEC 9 1975

vs.

Case No.
13872
BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

INDUSTRIAL COMMISSION
UTAH, LIBERTY MUTUAL
INSURANCE COMPANY, and
JERRY ALLEN TAYLOR,

Defendants.

**BRIEF OF THE DEFENDANT
LIBERTY MUTUAL INSURANCE COMPANY**

**Appeal from an Order of
The Utah Industrial Commission**

Richard H. Moffat
John L. Young
MOFFAT, WELLING,
PAULSEN & BURNINGHAM
9th Floor Tribune Building
Salt Lake City, Utah 84111
Attorneys for Defendant
Liberty Mutual Insurance
Company

Robert W. Brandt
Jon J. Bunderson
BRANDT, MILLER, NELSON
& CHRISTOPHERSON
716 Newhouse Building
Salt Lake City, Utah 84111
Attorneys for Plaintiffs
Mountain States Steel Company
and Argonaut Insurance Company

Vernon B. Romney
Utah Attorney General
State Capitol
Salt Lake City, Utah 84114
Attorney for Defendant
Industrial Commission of Utah

Jerry Allen Taylor
685 East 200 South
Pleasant Grove, Utah
Appearing pro se

FILED
DEC 9 1975
Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF THE KIND OF CASE	1
DISPOSITION IN THE INDUSTRIAL COMMISSION	2
RELEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
POINT I	
THE INDUSTRIAL COMMISSION'S ORDER IS CORRECT UNDER THE LAWS OF THE STATE OF UTAH	3
POINT II	
THIS COURT HAS CORRECTLY RE- FERRED THE ISSUE OF APPORTION- MENT TO THE LEGISLATURE OF THE STATE OF UTAH	6
CONCLUSION	7

CASES CITED

Duaine Brown Chevrolet Company and Royal Globe Insurance Company v. Industrial Commission of Utah and Arland K. Storer, 511 P.2d 743, 29 Utah 2d 478 (1973). (R. 142)	3, 4, 5, 6, 7
---	---------------

IN THE SUPREME COURT OF THE STATE OF UTAH

MOUNTAIN STATES STEEL
COMPANY and ARGONAUT
INSURANCE COMPANY

Plaintiffs,

vs.

INDUSTRIAL COMMISSION OF
UTAH, LIBERTY MUTUAL
INSURANCE COMPANY, and
JERRY ALLEN TAYLOR,

Defendants.

Case No.
13872

BRIEF OF THE DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY

NATURE OF THE CASE

This is an appeal from an order of the Utah Industrial Commission which relied on this Court's decision holding that apportionment of liability among successive workmen's compensation insurance carriers was not allowed in Utah in the absence of a statute specifically providing for apportionment.

DISPOSITION IN THE INDUSTRIAL COMMISSION

The Commission ruled that plaintiffs, Argonaut insurance Company and Mountain States Steel, were liable to applicant-employee, Jerry Taylor, for compensation under the Utah Workmen's Compensation Act for his 15% permanent partial disability as well as his medical expenses and temporary total disability subsequent to the third of a series of three injuries to his back.

RELIEF SOUGHT ON APPEAL

The defendant, Liberty Mutual Insurance Company, seeks to have the Industrial Commission's order affirmed in its entirety.

FACTS

The defendant, Liberty Mutual Insurance Company, agrees with plaintiff's Statement of Facts in part. However, the following information should be included. The medical panel stated in its report, inter alia, that:

"The accident of October 3, 1973 was the immediate precipitating factor making surgery then rather urgently necessary..."

The panel goes on to say that:

"It is possible that any one of these accidents in itself could have ultimately resulted in the need for surgical treatment. The panel attempted in its answers . . . to outline a logical sequence of

medical events and is of the opinion that, *though it may be somewhat arbitrary in nature*, it would best be considered a reasonable medical probability that each of these events contributed one-third to the need for surgery at this time." (emphasis added) (R. 120).

The Industrial Commission reversed the award of 15% permanent partial disability with 5% being contributed by each carrier. The Commission noted that:

"Even though we appreciate the medical panel attempting to separate the responsibility we believe it is difficult for the Commission to make this separation when the conclusions are arbitrary in nature. However, our reversal is based primarily on the case of *Duaine Brown Chevrolet Company and Royal Globe Insurance Company v. Industrial Commission of Utah and Arland K. Storer*, 511 P.2d 743, 29 Utah 2d 478 (1973). (R. 142).

The Commission held that on the basis of the facts herein, apportionment among the various carriers would be inappropriate and assessed the liability against the plaintiffs.

ARGUMENT

POINT I

THE INDUSTRIAL COMMISSION'S ORDER IS CORRECT UNDER THE LAWS OF THE STATE OF UTAH.

The question presented by the plaintiff here is whether the Commission should have apportioned liabil-

ity for the claimed benefits among the various accidents. In order to do so, it would require this Court to reverse its recent holding in *Duaine Brown Chevrolet Co. and Royal Globe Insurance Co. v. Industrial Commission of Utah and Arland K. Storer*, 511 P.2d 743, 29 U.2d 478 (1973). This Court held in that case that no apportionment would be made without statutory authority. There were no statutes under Utah's workmen's compensation law providing for apportionment at that time and there are none presently.

The facts in *Duaine Brown v. Storer*, supra, were almost identical to those presently before the Court. Storer had suffered a series of injuries resulting from his employment which occurred in the years 1965, 1966, 1969, April 1, 1970, and on November 14, 1970. Each of the injuries resulted while Storer was engaged in lifting various automobile parts or in fitting them together. On October 3, 1971, Storer underwent surgery for the purpose of repairing two herniated discs. The medical panel was unable to attribute the two herniated discs to the accident of November 14, 1970, or to a particular earlier accident. The report of the medical panel attempted to apportion Storer's physical impairment among the various accidents which contributed to his disability.

In the instant case, the applicant, Jerry Allen Taylor, suffered an industrial injury in 1969 while in Oregon. He was compensated for temporary disability under the Oregon workmen's compensation law. There-

after, he moved to Utah and suffered another back injury in January, 1973. He continued work without losing any time until October 5, 1973 when he again injured his back during the course of his employment. Following this injury he underwent surgery for the repair of two herniated discs.

The medical panel report indicates that the medical panel attempted to apportion the responsibility of Mr. Taylor's physical impairment among the carriers involved. However, the medical panel report states that this was done in a somewhat arbitrary nature. (See pages 2 and 3, *supra*, re: panel report). The report also states,

"The Medical Panel is aware that it may have somewhat circumvented a positive direct approach to who should pay for the surgery, its subsequent lost time and postoperative care. It is hoped that the Panel's answers as outlined in its responses numbers 1, 2 and 3 will serve as medical guidelines under which a legal determination can be made. If this is not possible by wording given by the Medical Panel, *it is prepared to make a somewhat more definite but arbitrary recommendation.* (emphasis added.) (R. 121).

Thus, the medical panel in two different statements in its report acknowledges that it had the same type of problem that the medical panel had in *Duaine Brown v. Storer*, *supra*.

The apportionment was clearly arbitrary and without reasonable medical certainty and the *Duaine Brown v. Storer*, *supra*, decision clearly governs herein.

In *Duaine Brown v. Storer*, supra, this Court said that:

Some states have apportionment statutes which allow a recovery to be prorated among multiple insurers. We have no such statute in the State of Utah, nor has this court attempted by decision to make apportionments. The record in this case would indicate that Storer's last injury aggravated his prior disability and the act of the Commission in assessing the award against plaintiff's was correct.

The Court further stated in *Storer*, supra, that:

"We are obliged to look at the evidence most favorable to the Commission's findings, and the Court will not interfere with the orders of the Commission unless it appears as a matter contrary to law or contrary to the evidence.

In the instant case, the evidence is undisputed and the issue of law involved has been recently put to rest by this Court.

POINT II

THIS COURT HAS CORRECTLY REFERRED THE ISSUE OF APPORTIONMENT TO THE LEGISLATURE OF THE STATE OF UTAH.

This Court, as is clear from the language in *Duaine Brown v. Storer*, supra, above quoted, has referred the issue of apportionment to the Legislature. This Court

has fully considered the arguments for and against apportionment. After full consideration this Court has disposed of the apportionment issue properly. There have been no relevant changes made by the Legislature to date and no significant change in circumstance to warrant a reversal of this Court's position as set forth in *Duaine Brown v. Storer*, supra.

CONCLUSION

The medical panel made an admitted arbitrary apportionment without having or being able to find sufficient medical basis for such ruling. Under the circumstances and facts found in the case at bar this Court's decision in *Duaine Brown v. Storer*, supra, is governing and the decision of the Industrial Commission should be affirmed.

Respectfully submitted,

MOFFAT, WELLING, PAULSEN
& BURNINGHAM

By Richard H. Moffat

By John L. Young

9th Floor Tribune Building
Salt Lake City, Utah 84111

Attorneys for Defendant

Liberty Mutual Insurance Company

**RECEIVED
LAW LIBRARY**

DEC 9 1975

**BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School**