

1978

# Jeannette U. Swan v. Dr. Robert H. Lamb And Dr. Dennis D. Thoen : Supplemental Authority In Support of Petition For Rehearing

Utah Supreme Court

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W. Eugene Hansen; Attorney for Appellant Ray Christensen; Attorney for Respondent Dr. Lamb Rex Hanson; Attorney for Respondent Dr. Thoen

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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JEANNETTE U. SWAN, :  
Plaintiff-Appellant, :  
vs. : Case No. 14823  
DR. ROBERT H. LAMB and :  
DR. DENNIS D. THOEN, :  
Defendants-Respondents :

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SUPPLEMENTAL AUTHORITY IN SUPPORT  
OF PETITION FOR REHEARING

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Appeal from a Judgment of the Third District Court of  
Salt Lake County, Honorable Bryant H. Croft, Judge

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SUPPLEMENTAL AUTHORITY IN SUPPORT  
OF PETITION FOR REHEARING

Respondent, Dr. Dennis D. Thoen respectfully submits to the Court in support of Defendants-Respondents' Petition for Rehearing the decision of Daly vs. General Motors Corporation, California Supreme Court, 575 P.2d 1162 (decided April 13, 1978) in which the California court held that its decision applying comparative negligence to the doctrine of strict liability should not be retroactive.

The following excerpt from the court's opinion is pertinent:

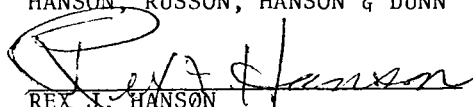
It remains for us to decide the extent to which comparative principles are to be applied to strict liability actions other than those hereafter filed. We conclude that, for reasons of public policy and the reasonable expectations of the parties to this action and litigants generally, the principles herein expressed shall apply to all cases in which trial has not begun before the date this opinion becomes final in this court. No judgment based upon a trial which was commenced prior to the finality of this opinion shall be reversible on appeal on the sole ground that principles of comparative fault were not applied. If any such judgment is reversed on appeal for other reasons, the principles herein expressed shall be applicable to any retrial commenced

after this opinion becomes final in this court. (Li Yellow Cab Co., supra, 13 Cal.3d at p. 829, 119 Cal. Rptr. 858, 876, 533 P.2d 1266, 1244; Westbrook v. Mihaly (1970) 2 Cal.3d 765, 800, 87 Cal.Rptr. 839, 471 P.2d 487, vacated on other grounds (1971) 403 U.S. 915, 91 S.Ct. 2224, 29 L.Ed.2d 692) As in Li, we give particular emphasis to "considerations of reliance applicable to individual cases according to the state of litigation which they have reached . . ." (Ibid.)

Likewise the decision in this case changing the long established "locality rule" pertaining to the standard of care required of medical doctors should only have prospective effect.

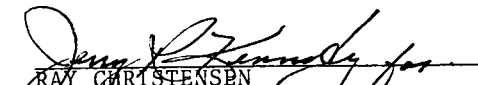
RESPECTFULLY submitted this 6 day of October, 1978.

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I HEREBY CERTIFY that a copy of the foregoing Supplemental Authority for Petition for Rehearing was personally delivered to attorney for Plaintiff-Appellant, W. Eugene Hansen, 2020 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111 this 6th day of October, 1978.

W. A. Carlson