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McKesson Corp. [Employer], and C.W. Reese Co.  
[Insurance Carrier for Employer] v. Robert P.  
Lieberman, and the Utah Labor Commission :  
Reply Brief

Utah Supreme Court

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Robert Lieberman; pro se; Alan L. Hennebold; Deputy Commissioner; Labor Commission of Utah. Henry K. Chai, II; Kristy L. Bertelsen; Blackburn and Stoll L.C.; Attorneys for Appellants.

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MCKESSON CORP. [Employer], and  
C.W. REESE CO. [Insurance Carrier for :  
Employer],

Court of Appeals  
Case No.: 20000800-CA

## Priority 7

Labor Commission No.: 99-0885

**Respondents/Appellees.**

## Appeal from the Utah Labor Commission

Henry K. Chai, II  
Kristy L. Bertelsen  
BLACKBURN & STOLL, LC  
Attorneys for Petitioners/Appellants  
McKesson Corp. and C.W. Reese Co.  
77 West 200 South, Suite 400  
Salt Lake City, UT 84101-1609

**PETITIONERS RESPECTFULLY REQUEST ORAL ARGUMENT  
AND THAT THIS CASE BE REPORTED.**

**FILED**  
**Utah Court of Appeals**  
**ARGUMENT**  
**APR 03 2001**

**Paulette Stagg**  
**Clerk of the Court**

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**IN THE UTAH COURT OF APPEALS**

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MCKESSON CORP. [Employer], and  
C.W. REESE CO. [Insurance Carrier for  
Employer],

Petitioners/Appellants,

vs.

ROBERT P. LIEBERMAN, and the  
UTAH LABOR COMMISSION,

Respondents/Appellees.

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Court of Appeals

Case No.: 20000800-CA

Priority 7

Labor Commission No.: 99-0885

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**REPLY BRIEF OF APPELLANTS**

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Appeal from the Utah Labor Commission

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Robert Lieberman, *pro se*  
5981 Lakeside Drive  
Salt Lake City, Utah 84121

Alan L. Hennebold  
Deputy Commissioner  
Labor Commission of Utah  
160 East 300 South  
P.O. Box 146615  
Salt Lake City, Utah 84114-6615

Henry K. Chai, II  
Kristy L. Bertelsen  
BLACKBURN & STOLL, LC  
Attorneys for Petitioners/Appellants  
McKesson Corp. and C.W. Reese Co.  
77 West 200 South, Suite 400  
Salt Lake City, UT 84101-1609

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## **ARGUMENT**

### **LIEBERMAN IS NOT ENTITLED TO ADDITIONAL WORKERS' COMPENSATION BENEFITS**

#### **1. Liberal Construction Rules Do Not Apply When Utah Law Does not Support Such an Award.**

Appellees argue that because Utah law promotes liberal construction of the Workers' Compensation Act (the "Act"), additional benefits are justified in this case. Appellants agree that Utah's courts and the Labor Commission should construe the Act in favor of coverage and compensation. See Heaton v. Second Injury Fund, 796 P.2d 676 (Utah 1990). However, this command does not dispense with the requirement that an injured party prove his case by a preponderance of the evidence. See Lipman v. Ind. Comm'n, 592 P.2d 616 (Utah 1979). Indeed, this court held in Jackson v. Industrial Comm'n, Memorandum Decision, 920804-CA (Utah Ct. App. 1993), that "regardless of the remedial nature of the worker's compensation statutes, a liberal construction cannot relieve the applicant from the threshold requirement to demonstrate causation." Id.; see Utah Code Ann. § 34A-2-401 (allowing workers' compensation benefits only if requirements of this provision are met).

As previously stated in appellants' initial brief and below, appellants are not liable to pay additional workers' compensation benefits due to the applicant's failure to meet the legal causation test articulated in Allen v. Industrial Comm'n, 729 P.2d 15 (Utah 1986) and its progeny, Large v. Industrial Comm'n, 758 P.2d 954 (Utah Ct. App. 1988) and Stokes v. Board of Rev. of Ind. Comm'n, 832 P.2d 56 (Utah Ct. App. 1992).

**2. The Direct and Natural Consequences Rule is Synonymous with the Proximate Causation Test.**

Relying on the “direct and natural consequences rule” articulated in Larson’s treatise and Intermountain Health Care v. Industrial Comm’n, 839 P.2d 841 (Utah Ct. App. 1992), appellees maintain that additional benefits are awardable in this case. It is important to note that in application, the “direct and natural consequences rule” articulated in Intermountain and Larsons is synonymous with the proximate causation test applied in older Utah cases. Compare A. Larson’s Workers Compensation Law (Desk Edition) § 13.10 et. seq. with § 6.60. See Appellants’ initial brief at 4. As stated in Large, proximate causation involves an analysis of “foreseeability, negligence and intervening causes.” Large, 758 P.2d at 956. In Aetna Life Ins. v. Industrial Comm’n, 231 P. 442 (Utah 1924) the Utah Supreme Court defined proximate cause as “that cause which naturally lead to, and which might have expected to produce the result.” Id. at 444. The direct and natural consequences rule, articulated by appellee and undoubtedly applied by the Commission, similarly involves the analysis of foreseeability, natural results, intervening causes, and the fault of the claimant or doctor, etc. See, e.g., Intermountain, 839 P.2d at 845; Mountain States Casing Serv. McKean, 706 P.2d 601, 602 (Utah 1985); Larsons (Desk Edition) § 13.11 to 13.21. However, in light of Allen, the Labor Commission’s evaluation of this case based upon these factors, especially fault, amounts to legal error.

**3. The Proximate Causation Test is Not the Appropriate Legal Test, Rather the Allen Legal Causation test Applies.**



The Utah Court of Appeals has clearly ruled in two post-Allen cases that a fault and proximate causation analysis is “not appropriate for workers’ compensation cases.” Large, 758 P.2d at 956; see Stokes, 832 P.2d at 62; Appellants’ initial brief at 12-16. In fact, this Court held in Stokes that a proper analysis in workers compensation cases is the Allen legal causation standard rather than a proximate causation and fault-based analysis. Despite this precedent, however, Appellees maintain that Intermountain is inconsistent with Large and Stokes and instead applies here. While we agree that the legal principles articulated in Large and Stokes are somewhat inconsistent with the court’s ruling in Intermountain, we believe that the inconsistency is easily explained by a careful review of these cases. Specifically, in Intermountain, the court stated:

We do not agree with IHC that the correct standard for determining employer liability for subsequent injuries occurring after an industrial injury essentially amounts to a "but for" analysis. In Mountain States Casing Servs. v. McKean, 706 P.2d 601 (Utah 1985), the Utah Supreme Court stated that "[a] subsequent injury is compensable if it is found to be a natural result of a compensable primary injury." Id. at 602 (emphasis added). A claimant "is not required to show that his original tragedy was the sole cause of a subsequent injury, but only that the initial work-related accident was a contributing cause " of the subsequent injury. Id. (emphasis added). McKean and Perchelli both draw from Larson's statement of the general rule regarding workers' compensation, which provides in pertinent part:

The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. . . .

The applicable test includes an analysis of the facts surrounding the subsequent injury and analysis of the connection between the subsequent injury and the original compensable industrial injury.

Intermountain, 839 P.2d at 845-46.

Appellants respectfully submit that this Court erroneously relied upon pre-Allen case law in rendering its decision in Intermountain. Stokes, decided the *same year* as Intermountain accurately states that the Allen legal causation standard applies in workers compensation matters rather than a fault and proximate causation analysis. See Stokes, 832 P.2d at 62. Given the fact that the Intermountain decision relies upon cases pre-dating Allen, that case is of little precedential authority and should not be considered by this Court.

In any event, even if this Court determines that the law is somewhat unclear, the better view is that proximate causation (a.k.a., the direct and natural consequences rule) should not apply in workers' compensation cases. First and most importantly, the Allen decision *already* provides a "legal causation" analysis which takes into consideration injuries where a person has a preexisting condition and then suffers a subsequent, contributing injury, such as in this case. Under Allen, the analysis for this case is simple and straight-forward.<sup>1</sup> Contrary to appellees' assertion, there is no qualification, nor should there be, that Allen's legal causation test applies only to *primary*, as opposed to *exacerbations* of work-related,

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<sup>1</sup> In this case, the application of Allen would be as follows: (1) A determination must be made whether a claimant has a preexisting condition. (2) The preexisting condition must be contribute to the injury (i.e., the fact that the claimant has any preexisting condition does not trigger the higher legal causation standard, the preexisting condition must contribute -- be relevant -- to the injury). (3) If these requirements are met, the application of the higher legal causation standard applies. (4) The industrial nature of the subsequent injury should have no part in the analysis, unless of course the second injury occurred in the same workplace whereupon the lower legal causation standard of Allen (rather than the higher standard in Allen) would of course apply.

injuries. Moreover, the fact that there is no case law applying post-Allen law to a case such as Lieberman's is simply irrelevant. Allen should apply in all contexts when a court must determine the liability for two contributory injuries when at least one of them is industrial.

The second policy reason supporting appellants' position is that Utah's appellate courts have consistently held that the workers' compensation system is not fault-based. See Shattuck-Owen v. Snowbird, 2000 UT 94, ¶19, 410 Utah Adv. Rep. 19 (stating "[t]he workers' compensation system constitutes a quid pro quo between employers and employees. . . Under the Act's balancing of rights, 'employees are able to recover for job-related injuries *without showing fault*.'"); Kunz v. Beneficial Temporaries, 921 P.2d 456 (Utah 1996) (stating [t]he Workers' Compensation Act is predicated entirely on the status of an employment relationship *rather than on fault*). In Burgess v. Siaperas Sand & Gravel, 965 P.2d 583 (Utah Ct. App. 1998), this Court stated:

The [Workers' Compensation] Act is a humanitarian and economical system designed to provide relief to the victims of industrial accidents:

The Workers' Compensation Act is a comprehensive statutory scheme that provides remedies for injuries to workers occurring in the course of their employment, *irrespective of fault*, in lieu of common law tort actions.

Id. (emphasis added). Similarly, in Large, this Court stated:

We agree that a "proximate cause" analysis, as that term is commonly used, is not appropriate in workers' compensation cases. ***Proximate cause is used primarily in tort law and involves analysis of foreseeability, negligence and intervening causes. These factors are not present in the statutory workers' compensation system, which excludes consideration of fault.*** A. Larson, 1 Workmen's Compensation Law § 6.60 (1985). Although proximate cause is not an appropriate standard, the Utah Supreme Court has, nevertheless, required proof of a causal relationship as a prerequisite to awarding workers'

compensation benefits. Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986).

Large, 758 P.2d at 956.

Based upon the foregoing, the Commission's consideration of fault -- that is, whether Lieberman was "negligent" in jumping into the truck -- was legally improper under Utah Supreme Court law. See Shattuck-Owen, 2000 UT 94, ¶19. Accordingly, appellants respectfully urge this Court to reverse the Commission's ruling and apply the legal causation standard articulated in Allen.

**4. Even if the Proximate Causation Test Applies, the Commission Committed Legal Error in Concluding that Lieberman's Act of Jumping into his Truck was the Natural and Direct Result of His Initial Work Injury**

Assuming *arguendo* that the proximate causation analysis applies, whether Lieberman's own act of jumping into his truck breaks the necessary chain of causation under this test is a matter of law. Accordingly, the Commission's ruling that Lieberman was not "negligent" need not be reviewed by this Court under any discretionary standard, but rather must be reviewed for correctness.

Basic proximate causation principles, having their origin in tort law, require that there be a causal connection between the original and subsequent injury. See Mountain States, 706 P.2d at 602-03. If there is no causal connection between the initial and subsequent injury, the latter will constitute an independent (a.k.a, superceding) intervening cause, breaking the chain of causation. See 99 C.J.S. Workmen's Compensation § 180(b). As stated in

appellants' initial brief, Lieberman's act of jumping into his vehicle was not a "natural result of" the first injury. It was not a medical complication that flowed from the original accident, see Perchelli v. Utah Ind. Comm'n, 475 P.2d 835, 837-38 (Utah 1970), but rather was an entirely *new accident* which breaks the chain of causation. Moreover, contrary to appellee's assertion, Lieberman's act of jumping into his vehicle can be considered superceding simply because it is attributable to the claimant's *own negligence* (i.e., carelessness and inattention). See Mountain States, 706 P.2d at 603. Accordingly, even if the proximate causation standard applies, the Commission legally erred in concluding that the May 22, 1999 event did not relieve McKesson of liability.

## CONCLUSION

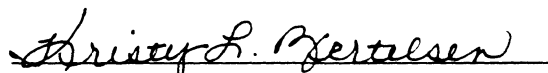
Appellants respectfully request this Court to reverse the Labor Commission's decision to award Lieberman additional workers compensation benefits. The Commission selected the incorrect legal standard to this matter. The proper legal test is the Allen legal causation test. In any event, even if the Commission selected the appropriate legal standard, it wrongly applied it in this case.

If this Court chooses to apply the standard set forth by Appellees and in Intermountain, the legal causation rule will hinge on *when* the industrial accident occurred (ie., whether the industrial accident preceded or followed an industrial or non-industrial accident). This was certainly not the intent of the Workers Compensation Act or the Supreme Court in delineating the Allen legal causation test. Because the appropriate

standard is Allen's legal causation test, this Court must remand this matter to the Labor Commission for proper evaluation.

Respectfully submitted this 3<sup>rd</sup> day of April, 2001.

BLACKBURN & STOLL, LC



Henry K. Chai II

Kristy L. Bertelsen

Attorneys for Appellants McKesson Corp. and  
C.W. Reese Co.

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing document were mailed, first class, postage prepaid, or hand delivered, on the 4th day of April, 2001, to:

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---	--

Robert P. Lieberman 5981 Lakeside Drive Salt Lake City, Utah 84121	(1 copy; mailed)
--	------------------

Alan L. Hennebold, General Counsel Labor Commission of Utah 160 East 300 South P.O. Box 1466 Salt Lake City, Utah 84114-6615	(1 copy; mailed)
--	------------------

