

2000

# Susan Deneen Brown v. Utah Transit Authority : Brief of Appellant

Utah Supreme Court

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J. Kent Holland; Anderson and Holland; Attorney for Appellant.

Ms. Kathryn H. Pett; Attorney for Appellee.

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BEFORE THE UTAH SUPREME COURT

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SUSAN DENEEN BROWN	)	OPENING BRIEF OF
	)	PLAINTIFF/APPELLANT
Plaintiff/Appellant	)	SUSAN DENEEN BROWN
	)	
	)	
vs.	)	
	)	
UTAH TRANSIT AUTHORITY and	)	Case Number: 20000867-SC
DOES I through V	)	
	)	
Defendants/Appellees.	)	Priority 15
	)	

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APPEAL FROM THIRD DISTRICT COURT ORDER  
SALT LAKE COUNTY, STATE OF UTAH  
(HONORABLE JUDGE WILLIAM A. THORNE, JR.)

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Ms. Kathryn H. Pett  
GENERAL COUNSEL  
Attorney for Appellee  
Utah Transit Authority  
3600 South 700 West  
P.O. Box 30810  
Salt Lake City, Utah 841300810  
Telephone: (801) 262-5626

J. Kent Holland, #1520  
ANDERSON & HOLLAND  
Attorney for Appellant  
623 East First South  
P.O. Box 11643  
Salt Lake City, Utah 84147-0643  
Telephone: (801) 363-9345

**FILED**

MAY 10 2001

UTAH SUPREME COURT  
UTAH

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Ms. Kathryn H. Pett  
GENERAL COUNSEL  
Attorney for Appellee  
Utah Transit Authority  
3600 South 700 West  
P.O. Box 30810  
Salt Lake City, Utah 841300810  
Telephone: (801) 262-5626

J. Kent Holland, #1520  
ANDERSON & HOLLAND  
Attorney for Appellant  
623 East First South  
P.O. Box 11643  
Salt Lake City, Utah 84147-0643  
Telephone: (801) 363-9345

## **COMPLETE LIST OF ALL PARTIES**

Pursuant to Rule 24 (a) (1) of the Utah Rules of Appellate procedure, the undersigned counsel for Appellant represents that the named parties, Susan Deneen Brown, and Utah Transit Authority, are and have been the only parties to this litigation.

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## **I. STATEMENT OF JURISDICTION**

This case is on review from an order of the Third District Court by the Honorable Judge William A. Thorne, Jr. The Appellant/Plaintiff, Susan Deneen Brown, filed a Notice of Appeal with the Utah Supreme Court pursuant to § 78-2-2 and Rules 3 and 4 Utah Rules of Appellate Procedure.

## **II. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Did Appellant/Plaintiff Susan Deneen Brown sufficiently comply with the notice of claim provisions of the Utah Governmental Immunity Act that apply when an individual sues a political subdivision. See § 63-30-11 through 63-30-13 Utah Code Annotated.

### **APPLICABLE STANDARD OF APPELLATE REVIEW**

The applicable standard of appellate review with respect to this issue of statutory interpretation is a question of law, which is reviewed for correctness.

*Brittain v. State*, 882 P.2d 666 (Utah App. 1994), *Jerz v. Salt Lake County*, 822 P.2d 770 (Utah 1991).

2. Whether Judge Thorne committed reversible error in granting

Appellee/Defendant's Motion for Summary Judgment in his statutory

interpretation of the notice of claim provisions of the Utah Governmental Immunity Act. See § 63-30-11 through 63-30-13 Utah Code Annotated

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### **III. STATEMENT OF THE CASE**

On March 24, 1995, the Plaintiff/Appellant, Susan Deneen Brown, hereinafter referred to as “Brown”, fell while using a Utah Transit Authority bus as a passenger. On or about March 1, 1996, a Notice of Claim was sent on Brown’s behalf by certified mail to the Appellee/ Defendant Utah Transit Authority, hereinafter referred to as “UTA”. On or about March 1, 1996 a Notice of Claim was sent by certified mail to the Office of Attorney General, State of Utah.

On or about March 8, 1996, two U.S. Postal return receipts were received by the Brown’s counsel. The one from the Attorney General’s office was stamped



and signed as received; the one from the Utah Transit Authority was returned unsigned.**Tr.00031.** Accordingly, a staff member of the law firm telephoned the Utah Transit Authority Risk Management Department to verify if in fact the Notice of Claim had been received.**Tr.000033** James Anderson of that department confirmed that he had received the Notice of Claim on March 6, 1996.

On March 4, 1997 the complaint was filed, within the one year, following rejection of the claim by Utah Transit Authority.**Tr.00001-4.** UTA filed an answer to the complaint on or about March 25,1997.**Tr.00010-13.** On August 14, 1997 UTA filed a motion for summary judgment.**Tr.00016-17** Both UTA and Brown filed affidavits and memorandums pursuant to said motion.**Tr. 00018-26, Tr.00028-30, Tr.00032-41** On October 31, 1997 Judge William A. Thorne, Jr. entered a minute entry granting UTA's motion for summary judgment.**Tr. 00044.** Brown filed a notice of appeal on November 25, 1997. **Tr.00046.** The Supreme Court advised Brown's counsel that its notice was premature since there was no "final order" but only a minute entry. UTA's counsel submitted an order but it was never signed. Brown's counsel recently submitted an order, however Judge Thorne's successor, Judge Dever, entered a minute entry on February 28, 2001 stating that a "signed minute entry

constitutes a final order of the Court and an additional order is not necessary.”

**Tr. no number**

#### **IV. SUMMARY OF ARGUMENTS**

1. Brown sufficiently complied with the notice of claim provisions of the Utah Governmental Immunity Act that apply when an individual sues a political subdivision when she sent written notice to the State of Utah Attorney General’s Office and UTA’s Risk Management Department on or about March 1, 1996 by certified mail.
2. Judge Thorne committed reversible error in granting Appellee/Defendant’s Motion for Summary Judgment in his statutory interpretation of the notice of claim provisions of the Utah Governmental Immunity Act. See § 63-30-11 through 63-30-13 Utah Code Annotated

#### **V. ARGUMENT**

- A. Appellant/Plaintiff Susan Deneen Brown sufficiently complied with the notice of claim provisions of the Utah Governmental Immunity Act that apply when an individual sues a political subdivision.**

Brown, a passenger, fell while using a UTA bus on March 24, 1995. On or about March 1, 1996 a Notice of Claim was sent on Brown’s behalf by certified mail to the Utah Transit Authority, Risk Management Department. On

or about March 1, 1996 a Notice of Claim was sent by certified mail to the Office of Attorney General, State of Utah. On or about March 8, 1996, Brown's counsel received two U.S. Postal return receipts. The postal receipt from the Attorney General's Office was stamped and signed as received; the receipt from the Utah Transit Authority was returned unsigned.**Tr.00031.**

Accordingly, a staff member of the law firm representing Brown telephoned the Utah Transit Authority Risk Management Department to verify if in fact the Notice of Claim had been received.**Tr.00033.** James Anderson of that department confirmed that he had received the Notice of Claim on March 6, 1996.**Tr.00039.** Brown complied sufficiently with notice of claim provisions of the Utah Governmental Immunity Act that apply when an individual sues a political subdivision. See § 63-30-11 through 63-30-13 Utah Code Annotated.

There is no question regarding the notice of claim sent to the Attorney General's office. The only question raised by UTA is as to the notice to UTA itself. UTA claims that because the Notice of Claim was received by the Risk Management Department of UTA that the Notice fails because it was not served on the "governing body".**Tr. 00019-20.** As one may expect, the legislature did not ever define the "governing body" of public transit districts. In *Larson v. Park City Mun. Corp.*, 955 P.2d 343 (Utah1998) this Court stated,

“... ‘governing body’ is not specifically defined in the Utah Governmental Immunity Act.”

In the case of *Brittain v. State*, 882 P.2d 666 (Utah App. 1994) the Court faced a similar problem in defining the term “agency concerned” as used in § 63-30-12 Utah Code Annotated. There, an individual named Brittain had slipped and fallen at the Utah Department of Employment Security aka Job Service. It would appear that Job Service would be the “agency concerned”. However, the Appellate Court stated,

“To interpret a statute, we first examine its plain language and will resort to other methods of statutory interpretation only if we determine that the language is ambiguous....

The Legislature.... employed the more nebulous and far broader language of ‘the agency concerned.’...

Because the term ‘agency concerned’ is not clear on its face, we will interpret the notice requirement of section 63-30-12 in a manner consistent with the overall purpose of the Utah Governmental Immunity Act. As explained by the Utah Supreme Court, ‘[i]t is necessary to consider the policy of the notice requirement so that in any particular case the facts can be evaluated to determine if the intent of the statute has been accomplished.’ *Stahl v. Utah Transit Auth.*, 618 P.2d 480 (Utah 1980)”

In the present case, “governing body” is at least as unclear as “agency concerned” is in *Brittain*.

Webster’s Dictionary defines govern as “to exercise a directing influence over”. Its definition of body as pertains to governing body is “a collective group”. Governing body must mean those people that run UTA. The claims

representative exercises a directing influence over the Risk Management of UTA. Is he not then part of the group inferred to be the “governing body” referred to in the statute?

In *Brittain v. State*, 882 P.2d 666 (Utah App.1994) the Court went on to state,

“ ‘ [T]he primary purpose of a notice of claim requirement is to afford the responsible public authorities an opportunity to pursue a proper and timely investigation of the merits of the claim and to arrive at a timely settlement, if appropriate, thereby avoiding the expenditure of public revenue for costly and unnecessary litigation.’ *Stahl v. Utah Transit Auth.*, 618 P.2d 480 (Utah 1980). ... Lastly, the requirement that the notice be in writing protects against the passage of time obscuring the memory and distorting a plaintiff’s recollection of the events, which are at the heart of the claim. See *Stahl*, 618 P.2d 480.”

In light of the broad language of § 63-30-13 and the aforementioned policy considerations, it is Brown’s contention that the written notice sent to the Risk Management Department of UTA constitutes compliance with § 63-30-13 Utah Code Annotated. In *Larson v. Park City Mun. Corp.*, 955 P.2d 343 (Utah1998), this Court found that the claim should have been served on the city council, yet found that service on the city recorder was adequate.

In the case at bar, the Risk Management Department of UTA is located in the same building as the UTA and is a part of the UTA; while in *Brittain*, it was State of Utah Risk Management, whose agency was not located [emphasis

added] in the same building as Job Service and State of Utah Risk Management was not even a part [emphasis added] of Job Service.

The UTA Risk Management Department had to take an active role in Brown's claim and, in fact, did so by investigating the claim and deciding to pay for some of the medical expenses of the injured Brown.**Tr.00039.** Further, the Court in *Brittain v. State*, 882 P.2d 666 (Utah App.1994) stated,

“The duties of Risk Management mandate it take an active role in Brittain's claim and clearly suggest it is the agency concerned. To begin with, Risk Management is authorized by law to handle Brittain's claim, representing the interests of the State. Risk Management is empowered with broad-based authority to handle claims on behalf of the State.”

In this case, one of the duties of the Risk Management Department is to handle claims, such as Brown's, on behalf of UTA.**Tr.00038.** Therefore, it is the Risk Management Department that is the governing body of risk management for UTA. Further, since the Risk Management Department is entrusted with the investigating and settling or defending against claims received, then it stands to reason that if the Risk Management Department is notified in a timely manner, then the requirement of providing notice is met. In *Brittain v. State*, 882 P.2d 666 (Utah App.1994), the Appellate Court stated,

“ Moreover, Brittain fulfilled the purpose of section 63-30-12 by filing notice of his claim with the attorney general and Risk Management. [emphasis added] Considering the duties delegated to Risk Management, it appears the state entity entrusted with

investigating and settling or defending the claim received the requisite notice in a timely manner and well within the one-year period imposed by the statute. Filing notice with Risk Management in no way inhibited the possibility of settling the claim without resort to litigation. In fact, given the powers and responsibilities the Legislature has bestowed upon Risk Management, the opposite is true. [emphasis added] Filing notice with Risk Management facilitated settlement discussions by providing notice to the agency responsible for the investigating and settling the claim and obviated the risk that Job Service or DFCM would fail to forward the notice to Risk Management as required by law.”

By providing notice to the department responsible for investigating and settling the claim, it obviated the risk that the “governing body”, whosoever that may be and it may include Risk Management, would not give the claim to the Risk Management Department. Notice to UTA through the Risk Management Department was adequate, if not the best method of notice, fulfilling the purposes of the notice requirements of the Utah Governmental Immunity Act. See *Brittain v. State*, 882 P.2d 666 (Utah App.1994).

**B. Judge Thorne committed reversible error in granting Appellee/Defendant’s Motion for Summary Judgment in his statutory interpretation of the notice of claim provisions of the Utah Governmental Immunity Act. See § 63-30-11 through 63-30-13 Utah Code Annotated**

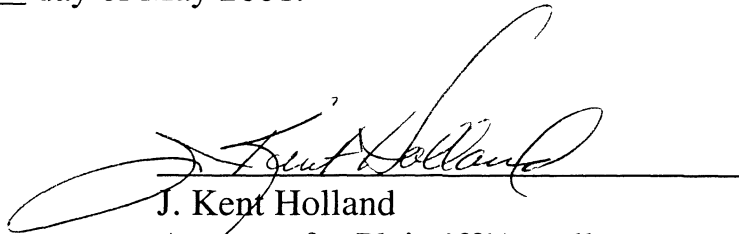
It is apparent from the case law that Brown complied with the notice requirements of the Utah Governmental Immunity Act. In *Brittain v. State*, 882 P.2d 666 (Utah App. 1994) it was determined that notice to risk management was

sufficient if not the best notice under the Utah Governmental Immunity Act. Therefore, the trial court erred in concluding that Brown failed to comply with § 63-30-13 Utah Code Annotated. Hence the matter must be reversed and remanded for trial on the merits.

## VI. CONCLUSION

In *Brittain v. State*, 882 P.2d 666 (Utah App. 1994), the Appellate Court found service of the Notice of Claim on Risk Management was proper. Brown served her Notice of Claim on the Risk Management Department of UTA. By doing so, Brown adequately complied with the notice of claim provisions of the Utah Governmental Immunity Act. Therefore the summary judgment entered dismissing her case was in error and must be reversed, allowing Brown her day in court.

DATED this 9<sup>th</sup> day of May 2001.

  
J. Kent Holland  
Attorney for Plaintiff/Appellant

No Addendum

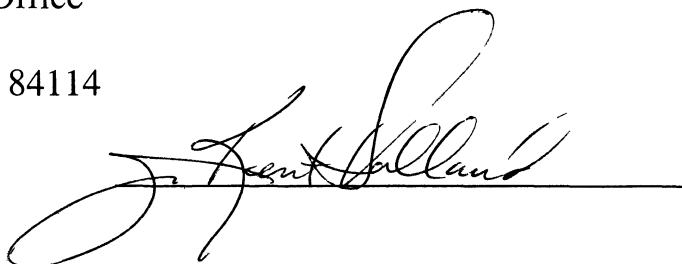


## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPENING  
BRIEF OF PLAINTIFF/APPELLANT, was mailed, postage pre-paid, this 10<sup>th</sup>  
day of May 2001, to the following:

Ms Kathryn H.S. Pett  
General Counsel  
UTAH TRANSIT AUTHORITY  
3600 South 700 West  
P.O. Box 30810  
Salt Lake City, Utah 84130-0810

Attorney General's Office  
236 State Capitol  
Salt Lake City, Utah 84114

A handwritten signature in black ink, appearing to read "Kent Holland", is written over a horizontal line.