

1987

# Lanier Brugh, Inc v. Bernice Steward : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)

 Part of the [Law Commons](#)

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

Thomas R. King; Dwight L. King & Associates; Barbara Elicerio; Industrial Commission of Utah; Attorney General's Office; Attorneys for Applicant.

James R. Black; Black & Moore; Attorney for Defendants.

---

## Recommended Citation

Brief of Respondent, *Lanier Brugh, Inc v. Steward*, No. 870418 (Utah Court of Appeals, 1987).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/627](https://digitalcommons.law.byu.edu/byu_ca1/627)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals 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](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

THOMAS R. KING #1823  
DWIGHT L. KING & ASSOCIATES, P.C.  
Attorneys for Respondents  
Suite 205 Sentinel Building  
2121 South State Street  
Salt Lake City, Utah 84115  
Telephone: (801) 486-8701

UTAH COURT OF APPEALS

BRIEF

JTAH  
DOCUMENT

K F U

50

A10

DOCKET NO.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

~~870418-CA~~

LANIER BRUGH, INC., AND/OR  
WORKERS' COMPENSATION FUND  
OF UTAH,

Defendants/Appellants,

vs.

BERNICE STEWARD, Widow of  
DALE STEWARD, Deceased, and  
INDUSTRIAL COMMISSION OF UTAH,

Applicant/Respondents.

Court of Appeals  
#870418CA

Industrial Commission  
#87000198

Argument Priority #6

BRIEF OF RESPONDENTS

Appeal from an Order of the Industrial Commission of Utah  
Administrative Law Judge Richard G. Sumsion

THOMAS R. KING  
Dwight L. King & Associates, P.C.  
2121 South State, Suite 205  
Salt Lake City, Utah 84115  
Attorneys for Applicant

BARBARA ELICERIO  
Industrial Commission of Utah  
160 East 300 South  
P.O. Box 45580  
Salt Lake City, Utah 84145-0580

ATTORNEY GENERAL'S OFFICE  
236 State Capitol Building  
Salt Lake City, Utah 84114

JAMES R. BLACK  
Black & Moore  
261 East Broadway, Suite 300  
Salt Lake City, Utah 84111  
Attorneys for Defendants/Appellants

FILED

FEB 18 1988

~~870418-CA~~

Timothy M Shea  
Clerk of the Court  
Utah Court of Appeals

THOMAS R. KING #1823  
DWIGHT L. KING & ASSOCIATES, P.C.  
Attorneys for Respondents  
Suite 205 Sentinel Building  
2121 South State Street  
Salt Lake City, Utah 84115  
Telephone: (801) 486-8701

IN THE COURT OF APPEALS OF THE STATE OF UTAH

LANIER BRUGH, INC., AND/OR  
WORKERS' COMPENSATION FUND  
OF UTAH,

Defendants/Appellants,

VS.

BERNICE STEWARD, Widow of  
DALE STEWARD, Deceased, and  
INDUSTRIAL COMMISSION OF UTAH,

Applicant/Respondents.

Court of Appeals  
#870418CA

Industrial Commission  
#87000198

Argument Priority #6

## BRIEF OF RESPONDENTS

Appeal from an Order of the Industrial Commission of Utah  
Administrative Law Judge Richard G. Sumsion

THOMAS R. KING  
Dwight L. King & Associates, P.C.  
2121 South State, Suite 205  
Salt Lake City, Utah 84115  
Attorneys for Applicant

BARBARA ELICERIO  
Industrial Commission of Utah  
160 East 300 South  
P.O. Box 45580  
Salt Lake City, Utah 84145-0580

ATTORNEY GENERAL'S OFFICE  
236 State Capitol Building  
Salt Lake City, Utah 84114

JAMES R. BLACK  
Black & Moore  
261 East Broadway, Suite 300  
Salt Lake City, Utah 84111  
Attorneys for Defendants/Appellants

## TABLE OF CONTENTS

	<u>Page</u>
JURISDICTION AND NATURE OF PROCEEDINGS BELOW . . . . .	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW . . . . .	2
DETERMINATIVE STATUTES . . . . .	2
STATEMENT OF THE CASE . . . . .	2
A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BY THE INDUSTRIAL COMMISSION . . . . .	2
B. STATEMENT OF FACTS . . . . .	3
SUMMARY OF ARGUMENT . . . . .	6
ARGUMENT . . . . .	8
POINT I: THE DECEDENT HAD NO PREEXISTING HEART CONDITION OR OTHER PREEXISTING CONDITIONS AND WAS ENTITLED TO USE THE "ANY EXERTION" STANDARD OF <u>ALLEN</u> TO ESTABLISH LEGAL CAUSATION . . . . .	8
POINT II: EVEN IF A PREEXISTING CONDITION IS FOUND TO EXIST, DECEDENT STEWARD EXPERIENCED UNUSUAL EXERTION . . . . .	12
POINT III: THE COMMISSION PROPERLY DETERMINED THAT MEDICAL CAUSATION WAS ESTABLISHED . . . . .	13
POINT IV: THE INDUSTRIAL COMMISSION MET ITS DUTY TO REVIEW THE ENTIRE RECORD . . . . .	21
CONCLUSION . . . . .	21
APPENDIX . . . . .	24
Utah Code Annotated, Section 35-1-77 . . . . .	25
Utah Code Annotated, Section 35-1-82.54 . . . . .	26
Utah Code Annotated, Section 35-1-88 . . . . .	27
Utah Rules of Evidence, Rule 201 . . . . .	28
Dr. J. Joseph Perry Letter . . . . .	29, 30
Dr. M. Peter Heilbrun Letters . . . . .	31, 32, 33, 34

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Allen v. Industrial Commission</u> , 729 P.2d 15 (Utah 1986) . . . . .	7, 12, 13, 19
<u>Champion Home Builders v. Industrial Commission</u> , 703 P.2d 306 (Utah 1985) . . . . .	20, 21
<u>Industrial Commission v. Havens</u> , 314 P.2d 698 (Colo. 1957) . . . . .	19, 20
<u>Kaiser Steel Corporation v. Monfredi</u> , 631 P.2d 888, (Utah 1981) . . . . .	6, 10
<u>North Beck Mining Co. v. Industrial Commission of Utah</u> , 58 Utah 486, 200 P. 111 (1921) . . . . .	18
<u>Prestige Homes, Inc. v. Legouffe</u> , 658 P.2d 850 (Colo. 1983) . . . . .	16

OTHER AUTHORITIES CITED

	<u>Page</u>
Utah Code Annotated, Section 35-1-45 . . . . .	2
Utah Code Annotated, Section 35-1-68 . . . . .	2
Utah Code Annotated, Section 35-1-77 . . . . .	2, 7, 20
Utah Code Annotated, Section 35-1-82.52 . . . . .	2
Utah Code Annotated, Section 35-1-82.54 . . . . .	2, 8, 21
Utah Code Annotated, Section 35-1-83 . . . . .	2
Utah Code Annotated, Section 35-1-88 . . . . .	2, 18
Utah Rules of Evidence, Rule 201 . . . . .	2, 7, 15



## STATEMENT OF ISSUES PRESENTED FOR REVIEW

Applicant Bernice Steward accepts in general the Statement of Issues presented by Appellants.

### DETERMINATIVE STATUTES

1. Section 35-1-45, Utah Code Annotated 1953, as amended.

#### Compensation for Industrial Accidents

2. Section 35-1-68, Utah Code Annotated 1953, as amended.

#### Injury Causing Death

3. Section 35-1-77, Utah Code Annotated 1953, as amended.

#### Medical Panel

4. Section 35-1-82.52, Utah Code Annotated 1953, as amended.

#### Hearing Before Examiner

5. Section 35-1-82.54, Utah Code Annotated 1953, as amended.

#### Review of Order by Commission

6. Section 35-1-83, Utah Code Annotated 1953, as amended.

#### Review by Court of Appeals

7. Section 35-1-88, Utah Code Annotated 1953, as amended.

#### Rules of Evidence and Procedure-Admissible Evidence

8. Rule 201, Utah Rules of Evidence

#### Judicial Notice

### STATEMENT OF THE CASE

- A. Nature of the case, course of proceedings, and disposition by the Industrial Commission.

Applicant Bernice Steward adopts the Statement of the Nature of the Case of Appellants.



B. Statement of facts.

Applicant Bernice Steward accepts for the most part the Statement of Facts of Appellants, but asserts that it is incomplete and therefore makes her own Statement of Facts as follows:

1. The decedent Dale W. Steward, husband of Applicant Bernice Steward, was employed by Lanier Brugh Corporation at the time of his death on November 12, 1985. Mr. Steward carried U.S. Mail during the course of his employment with Lanier Brugh. (R. 32, 232-233)

2. Mr. Steward was scheduled by his employer to leave Salt Lake City at 11:00 P.M. on November 10, 1985 to drive to Denver, Colorado. (R. 26-27)

3. The truck Mr. Steward was to drive was late arriving in Salt Lake City because of bad weather. Mr. Steward talked to the Lanier Brugh dispatcher several times during the night to determine if his truck was in. At approximately 1:00 o'clock A.M., he was instructed by the dispatcher to check back at 3:00 o'clock A.M. (R. 27-28) While he had worked for Lanier Brugh, Mr. Steward's truck had never before arrived so late. (R. 33)

4. Mr. Steward did not go to bed the night of November 10-11 and got no sleep because he wanted to be ready when the truck arrived. (R. 28-29)

5. Mr. Steward left the house to get his truck at 5:30 A.M. on November 11, 1985. (R.30) He arrived in Denver at approximately 5:30 P.M. on November 11. (R. 48) The trip from Salt Lake

to Denver took approximately 12 hours when it normally took 10 hours. (R. 48-49)

6. Mr. Steward called Mrs. Steward from Denver at 6:20 P.M. on November 11 and reported that the roads between Salt Lake City and Denver had been bad and very icy. (R. 30, 49) He sounded very tired. (R. 31)

7. Mr. Steward indicated he had to call his employer at 11:00 o'clock P.M. on November 11 to determine if his truck was ready for the normally scheduled return trip to Salt Lake City. (R. 31, 60) He told Mrs. Steward he did not have enough time to sleep and was too wound up. (R. 31-32)

8. Mr. Steward had never before had a short layover of five to six hours in Denver. The usual layover was twelve to fourteen hours. (R. 59-60)

9. It is estimated that Mr. Steward left Denver for the return trip to Salt Lake between approximately 11:00 P.M. and 11:15 P.M. on November 11. (R. 86)

10. The accident involving Mr. Steward occurred at approximately 11:30 P.M. according to the police report. (R. 99)

11. Although the police report indicated that road conditions were dry (R. 99), a passerby who stopped to assist stated that the surface of I-25 was wet with snow starting to stick to it (R. 102-103) His initial report shows a time of 11:45 P.M. (R. 102)

12. The police photographs of the scene do not reflect the time at which they were taken. (R. 52, 191) The officer's report shows arrival at the accident scene at 11:44 P.M. (R. 99)

13. An eyewitness to the accident observed the truck move over two lanes to the left and hit the concrete median, lodging on top. (R. 105) The two witnesses found Mr. Steward upside down in the truck cab with his arms hanging over his head and his feet tangled. (R. 102, 104, 106-7) Mr. Steward's eyes were open, there was no pulse, and no CPR was administered. (R. 106-7) The police arrived shortly after this point. (R. 104)

14. The emergency record from the Humana Hospital-Mountain View indicates Mr. Steward died at 12:08 A.M. on November 12, 1985, of acute cardiac arrest. (R. 116)

15. Mr. Steward's body was returned to Utah by Inman Nationwide Shipping. (R. 231) The mortician who prepared Mr. Steward's body for viewing at Walker Mortuary in Provo, Utah, stated his opinion that bruises and swelling on the right side of Mr. Steward's neck and face appeared to have resulted from a blow or impact. (R. 253)

16. Lanier Brugh expended approximately \$9,700.00 to repair damage to the truck driven by Mr. Steward. (R. 234-242) Along with other damage to the vehicle, the seat was damaged the steering wheel was bent, and the windshield was cracked. (R. 79)

17. On October 11, 1985, Mr. Steward was examined by Dr. Gerald R. Moress, who changed Mr. Steward's prescription for Dexedrine from 10 milligrams to 15 milligrams. At the time of his examination, Dr. Moress noted blood pressure at 120/80

and no carotid bruits. (R. 133) Treatment with Dexedrine apparently commenced in September, 1980. (R. 129-130) Mr. Steward was apparently taking Dexedrine at the time of the accident.

(R. 38)

18. Mr. Steward was 56 years old at the time of his death and smoked 1½ packs of cigarettes per day. He had smoked for approximately 36 years. (R. 55) Dr. Maurice Taylor had treated Mr. Steward for emphysema. (R. 125)

19. Mr. Steward was approximately 5 feet 7½ inches tall and weighed approximately 180 pounds. (R. 42)

20. Mr. Steward had no prior history of cardiac disease (R. 245) and had been told by Dr. Moress shortly before he died that he had the heart of a young man. (R. 42)

21. According to Mrs. Steward, Mr. Steward had taken Ritalin on only one occasion, and had taken only one of the 10 milligram Dexedrine tablets at a time. (R. 56-57)

#### SUMMARY OF ARGUMENT

POINT I: The Utah Supreme Court has pointed out on a number of occasions that an appellate court's review of Findings of Fact made by the Industrial Commission is strictly limited and is not based on agreement with the Commission's findings or whether the findings are supported by a preponderance of the evidence. The reviewing court's sole inquiry is,

whether the Commission's findings are 'arbitrary or capricious,' or 'wholly without cause' or contrary to the 'one [inevitable] conclusion from the evidence' or without 'any substantial evidence' to support them. Only then should the Commission's findings be displaced. Kaiser Steel Corporation v. Monfredi, 631 P.2d 888, 890 (Utah 1981).

In this matter, the Administrative Law Judge, affirmed by the Industrial Commission, correctly found that Mr. Steward had no preexisting heart condition or other preexisting conditions, allowing Mrs. Steward to establish legal causation by showing "any exertion connected with his employment." Allen v. Industrial Commission, 729 P.2d 15, 29 (Utah 1986).

POINT II: Mrs. Steward established by uncontroverted evidence that Mr. Steward was under unusual stress and was extremely fatigued at the time of death. He had had a sleepless night on November 10-11, had driven for 12 hours to Denver over icy roads, and had had a short, 5 to 6 hour layover with apparently no sleep before beginning his return to Salt Lake City. Legal causation was established even if the "unusual exertion" standard of Allen is applied.

POINT III: Medical causation was established by evidence from Dr. Heilbrun tying Mr. Steward's death to stress and fatigue and by the causation factors for cardiac arrhythmias referred to by Dr. Perry and of which the Administrative Law Judge properly took judicial notice pursuant to Rule 201, Utah Rules of Evidence. Section 35-1-77, Utah Code Annotated 1953, as amended, provides that the Commission may refer the medical aspects of a case to a medical panel. The Commission's use of a medical panel is thus permissive. Given the facts surrounding Mr. Steward's death, including his lack of sleep over the prior 26 hours, the evidence of a causal relationship between the stress and fatigue and Mr. Steward's death was not uncertain or highly technical.

POINT IV: The Commission properly reviewed the entire record in this matter as provided in Section 35-1-82.54, Utah Code Annotated 1953, as amended. Even if a transcript of the testimony were not reviewed, which has not been established, the Commission had available the summary of testimony prepared by the Administrative Law Judge.

#### ARGUMENT

POINT I. THE DECEDENT HAD NO PREEXISTING HEART CONDITION OR OTHER PREEXISTING CONDITIONS AND WAS ENTITLED TO USE THE "ANY EXERTION" STANDARD OF ALLEN TO ESTABLISH LEGAL CAUSATION

As the Workers' Compensation Fund has pointed out, the Administrative Law Judge in this matter found that the decedent, Dale Steward, had no "previously diagnosed heart condition". (R. 270) This finding is not controverted in any of the evidence before the Commission. The Fund refers to various "risk" factors but the fact remains that Mr. Steward had never previously been diagnosed as having heart problems and no medical examination before or after his death indicated the presence of preexisting heart disease.

The Fund refers to a comment of Dr. M. Peter Heilbrun, Mr. Steward's treating physician for a number of years for a prior industrial-related back injury, wherein Dr. Heilbrun stated: "In retrospect, it makes me wonder if some of his recent neck and shoulder pain was possibly myocardial in origin." (R. 135)

Dr. Heilbrun's comment was made in a November 18, 1985 letter to Dr. Gerald Moress, another of Mr. Steward's treating physicians, and appears to have been simply a question. Other evidence from Dr. Heilbrun adequately supports the finding of

the Administrative Law Judge. In a letter dated July 25, 1986, Dr. Heilbrun explained as follows:

Mr. Dale Steward was treated by me over several years, from the time of his industrial injury of August 1, 1975, to his death in 1985.

I last saw Mr. Steward on July 29, 1985 at which time he was having further neck pain which suggested evidence of persistent degenerative osteoarthritis without evidence of sufficient root compression. In addition, he had evidence of left shoulder pain secondary to either bicipital tendonitis impingement syndrome of the humeral head or a small rotator cuff tear. He improved with local injection by Dr. Ronald Mann.

It should be noted that, although Mr. Steward had evidence of musculo-skeletal disease, his apparent cause of death was a myocardial infarction while driving a truck.

He had no prior history of cardiac disease, thus his death should be considered to be an industrial-related [sic] cardiac event. (R. 245)

In addition to Dr. Heilbrun's statements, Dr. Moress had performed a physical examination of Mr. Steward on October 11, 1985, at which time he noted as follows:

From a health standpoint, he has been diagnosed as having emphysema. He continues to smoke two packs a day.

On examination blood pressure is 120/80, no carotid bruits, normal fundiscopic, normal pharynx. (R. 133)

At prior examinations on April 24, 1981, and September 27, 1980, Dr. Moress indicated on both occasions that Mr. Steward's blood pressure was 120/80 and noted no signs of heart trouble or heart disease. (R. 129, 131)

The only medical evidence presented by the Fund was a letter from J. Joseph Perry, M.D., to Shaun Howell, attorney for the Fund. Dr. Perry's conclusion is as follows:

In terms of medical probability it is most likely that [Dale Steward] experienced a fatal cardiac arrhythmia while driving, lost consciousness a few seconds later

thus losing control of the vehicle and having the accident as reported. It is possible that his dextroamphetamine was related to his death because it may worsen arrhythmias in susceptible [sic] individuals. (R. 111)

Dr. Perry made no other conclusion with regard to preexisting heart disease in Mr. Steward and there was thus no substantial medical evidence before the Administrative Law Judge to indicate that Mr. Steward had any heart condition.

The standard of review by an appellate court of Industrial Commission orders has been well explained in several opinions of the Utah Supreme Court. In Kaiser Steel Corporation v. Monfredi, 631 P.2d 288 (Utah 1981), the Utah Supreme Court, after reviewing a number of Utah cases, stated as follows:

Under any of these standards--Kavalinakis, Kent, or Norris--it is apparent that this court's function in reviewing Commission findings of fact is a strictly limited one in which the question is not whether the Court agrees with the Commission's findings or whether they are supported by the preponderance of evidence. Instead, the reviewing court's inquiry is whether the Commission's findings are 'arbitrary or capricious,' or 'wholly without cause' or contrary to the 'one [inevitable] conclusion from the evidence' or without 'any substantial evidence' to support them. Only then should the Commission's findings be displaced. Id. at 890.

It is clear in this case that there was substantial evidence to support the Administrative Law Judge's finding that Mr. Steward had no preexisting heart disease.

The Administrative Law Judge also found that one of the contributing factors to his stress was "the use of amphetamines, probably in greater amounts than usual because of the lack of adequate rest." (R. 270) The Judge's findings were based on references in the record to use of amphetamines by Mr. Steward. For example, his wife indicated during the November 5, 1986 hearing that Mr. Steward had been taking 10 milligrams of



Dexedrine, and that the dosage had recently been increased to 15 milligrams by Dr. Moress. (R. 38-40, 57) Mrs. Steward testified that he usually only took the medication while he was working:

Q How often would he take that medication?

A When he needed it.

But he wouldn't take it at home. He'd only take it while he was working, so he could stay awake. (R. 40)

\* \* \*

Q Did he have problems staying awake when he was home?

A Yes, he did.

Q What would he do?

A Well, only once in a great while, if it really got bad, well, then he'd take one and that. But he wouldn't take it towards the evening, he'd take it towards morning because he'd want to spend time with us. (R. 41)

Mrs. Steward referred to Mr. Steward's sleep condition as narcolepsy. (R. 38) In his initial reports with regard to Mr. Steward, Dr. Moress refers to possible narcolepsy. (R. 130, 131) Dr. Heilbrun refers on several occasions to Dr. Moress's treatment of Mr. Steward for narcolepsy. (R. 149, R. 255) Dr. Perry, however, felt that narcolepsy had not been securely diagnosed:

Complicating the issue is the mention of narcolepsy in the medical record. The patient had a history of sudden sleep attacks while driving and had been treated by amphetamines by his physician for several years prior to his demise. I find no studies in the records to document narcolepsy, thus this diagnosis is not secure in this individual. (R. 111)

The Administrative Law Judge made no finding that Mr. Steward suffered from narcolepsy or that narcolepsy was a preexisting medical condition. Although the Industrial Commission refers to narcolepsy in its Order Denying Motion for Review (R. 286), this reference does not amount to a finding.

Pursuant to the findings of the Administrative Law Judge, therefore, Mr. Steward was taking amphetamines at the time of his accident, but the use of amphetamines was directly related to his employment and was necessary for him to remain awake and alert while driving. This use of prescribed medication does not constitute a preexisting condition as defined in Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986).

POINT II: EVEN IF A PREEXISTING CONDITION IS  
FOUND TO EXIST, DECEDENT STEWARD  
EXPERIENCED UNUSUAL EXERTION

Pursuant to the factors set forth in Allen v. Industrial Commission, supra, since Mr. Steward did not bring to his work "a personal element of risk such as a preexisting condition", Id. at 25, any employment-related exertion is enough to establish legal causation.

If there is no personal causal contribution, that is, if there is no prior weakness or disease, any exertion connected with the employment and causally connected with the [injury] as a matter of medical fact is adequate to satisfy the legal test of causation. Id. at 26, citing Larson, Workman's Compensation, Sec. 38.83 (b), at 7-278.

Even if it were determined that Mr. Steward had a preexisting condition, the facts in this proceeding establish that Mr. Steward experienced "exertion greater than that undertaken in normal, everyday life", Allen, supra, at 25, or "an unusual or extraordinary

exertion." Id. at 26. The Administrative Law Judge heard undisputed testimony establishing that Mr. Steward had had little sleep for at least 26 hours prior to his death. Between 7:00 and 9:00 P.M. on November 10, 1985, he learned that his truck would be delayed. (R. 27) From at least that time until his departure at 5:30 A.M. on November 11, he did not go to bed and called the dispatcher for his employer on several occasions through the night to determine if his truck had arrived. (R. 28-29) When he called Mrs. Steward at 6:20 P.M. on November 11 from Denver, he indicated he was very tired and that he would not be able to sleep before leaving to return to Salt Lake at 11:00 P.M. (R. 30-32) According to Mrs. Steward, Mr. Steward's truck had never been as late as it was on November 10-11 and he had never had such a short layover in Denver. (R. 33, 59-60)

As indicated by uncontroverted testimony, Mr. Steward experienced unusual or extraordinary stress and fatigue prior to his death. The evidence provides a more than adequate basis for the Administrative Law Judge's finding that Mrs. Steward had established legal causation, even if the higher standard which comes into play when a preexisting condition exists is used.

POINT III. THE COMMISSION PROPERLY DETERMINED  
THAT MEDICAL CAUSATION WAS ESTABLISHED

The court in the Allen case, supra, summarized the claimant's responsibility as follows:

Under the medical cause test, the claimant must show by evidence, opinion, or otherwise that the stress, strain, or exertion required by his or her occupation led to the resulting injury or disability. Id. at 27.

Mrs. Steward presented evidence establishing the extreme fatigue and stress under which her husband was functioning at the time of his death. It is significant that the Fund's physician, Dr. Perry, apparently was not presented with information about the stress and fatigue factors, since nowhere in his letter does he mention Mr. Steward's schedule, his lack of sleep, or the effects on him of the adverse weather conditions he experienced while driving to Denver. (R. 110-111)

In a letter dated November 28, 1986, Dr. Heilbrun stated he had reviewed the fatigue and stress factors and noted as follows:

As I stated in my note of July 25, 1986, addressed 'To Whom It May Concern', I believe that, with the stress surrounding the driving and delivery requirements of Mr. Steward's job, I agree with Dr. Perry there is a reasonable medical probability that the patient suffered a fatal arrhythmia while driving and, thus, his death should be considered an industrial related [sic] cardiac event. (R. 255)

Although the findings and order of the Administrative Law Judge do not refer to Dr. Heilbrun's letter, counsel for Mrs. Steward received permission from the Judge to submit the letter (R. 92), and it was provided to opposing counsel and the Judge and made part of the record. (R. 254-256)

In sum, Dr. Heilbrun reviewed the stress and fatigue factors not addressed by Dr. Perry and determined they were contributing factors to Mr. Steward's death. No evidence of any nature contradicting Dr. Heilbrun's conclusion has been presented by the Fund.

Apart from the November 28 letter from Dr. Heilbrun, the Administrative Law Judge took judicial notice of a chart reproduced in the Order Denying Motion for Review of the Industrial Commission. (R. 287-288) As noted by the Commission, the chart constituted "consensus medical opinion that stress, fatigue and stimulants are all common precipitating causes of cardiac arrhythmias." (R. 287) The Fund makes much of the fact that the chart was not introduced during the hearing itself and asserts that the Fund was entitled to be afforded an opportunity to refute the judicially noted information. The Administrative Law Judge's consideration of the material, however, was entirely appropriate and is supported by the Utah Rules of Evidence, case law, and statutes.

Rule 201 of the Utah Rules of Evidence provides that a court may take judicial notice of adjudicative facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." (Rule 201(b)(2) ) The court may take judicial notice upon its own initiative (Rule 201(c) ) and, upon timely request, a party is entitled to be heard concerning the "propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken." (Rule 201(e) ) It is significant that judicial notice may be taken at any stage of a proceeding. (Rule 201(f) )

Although Rule 201 provides a mechanism for the Fund to be heard with regard to the Administrative Law Judge's taking of judicial notice, the Fund made no request to be heard and should

not be allowed to complain at this stage of the proceedings that it could not object to the material.

The Fund makes reference to a recent Colorado case, Prestige Homes, Inc. v. Legouffe, 658 P.2d 850 (Colo. 1983), wherein the Colorado Supreme Court held that the Colorado Court of Appeals improperly took judicial notice of certain medical treatises in overturning an Industrial Commission order. The court properly noted that judicial notice is cautiously used, Id. at 853, but the facts in the present situation are distinguishable from those in the Legouffe case. First, the Court of Appeals in Legouffe took judicial notice of medical information to overrule the specific fact findings of the Industrial Commission's referee. The appellate court used certain medical treatises to discredit the considered opinion of an expert medical witness concerning medical effects of contact by the decedent with a 220 volt power line. Id. at 853-854. The Supreme Court in Legouffe was justifiably critical of the appellate court's attempt to place itself in the position of the finder of fact.

By contrast, in the present case judicial notice was taken by the Administrative Law Judge of a table considered by the Commission to be "consensus medical opinion." (R. 287) The material is not in conflict with any of the medical opinions in the case and simply supplements evidence already before the court. Dr. Perry himself referred to certain factors which may cause a fatal cardiac arrhythmia, including drug use (R. 111) and coronary artery disease. (R. 112) As noted previously,

Dr. Perry did not consider the stress and fatigue factors, but they were reviewed by Dr. Heilbrun who felt Mr. Steward probably suffered a fatal arrhythmia if "the stress surrounding the driving and delivery requirements of Mr. Steward's job" was also considered. (R. 255-256)

The Administrative Law Judge was not attempting to substitute his judgment for that of any of the doctors in the matter, but rather took judicial notice of an additional factor not referred to by Dr. Perry. As noted by the Judge:

For the most part, the Administrative Law Judge adopts the foregoing opinions of Dr. Perry as his own findings of fact. However, the Administrative Law Judge finds that Dr. Perry's opinions do not appear to be based upon all of the facts as reflected by the record and for this reason the Administrative Law Judge differs from Dr. Perry with respect to the ultimate question of medical causation. (R. 272)

The Administrative Law Judge then concluded that emotional stress and fatigue "may well have precipitated [Mr. Steward's] fatal cardiac arrhythmia." (R. 272) This conclusion is supported not only by the judicially noted chart, but by the opinion of Dr. Heilbrun.

The Fund asserts that it would have refuted the evidence judicially noted by the Administrative Law Judge by pointing out that since Mr. Steward was taking prescription drugs, he was predisposed to suffering a fatal arrhythmia. (Appellants' Brief, p. 19) This position was already before the Administrative Law Judge, however, since Dr. Perry referred to the fact that dextroamphetamine could "worsen arrhythmias in susceptible individual (R. 111)

The Utah Supreme Court has approved Industrial Commission use of judicial notice even when in direct conflict with testimony of a physician. In North Beck Mining Co. v. Industrial Commission of Utah, 58 Utah 486, 200 P. 111 (1921), the Court stated as follows:

Commenting upon the position taken by the Commission, counsel for plaintiffs say it is difficult to see how they arrive at a 50 per cent. loss of his hand on this basis, because the only evidence in the record shows that the loss should be 'around 30 or 40 per cent.' That was the effect of the testimony of a physician at the hearing before the Commission. A majority of the Commission disregard the testimony of the physician, evidently believing that they knew as much as he about the degree of efficiency lost by the amputation of the fingers of a hand.

\* \* \*

We are impressed, from what is common knowledge of which courts take judicial notice, that the appellant's loss of the usability of his hand in his vocation as a miner exceeds the 50 per cent. loss of efficiency found by the Commission, and that if the Commission made any mistake it was not in finding the per centage of loss of claimant's right hand to be in excess of 50 per cent. Id. at 492-494.

In the present situation, as discussed above, the Administrative Law Judge took judicial notice of factors that had been already discussed by Dr. Heilbrun and Dr. Perry. The Judge did not use the judicially noticed material to refute any medical conclusion which dealt with all of the facts before him, but simply evaluated facts not addressed by Dr. Perry.

In conclusion, it hardly requires noting that Section 35-1-88, Utah Code Annotated 1953, as amended, provides:

Neither the commission nor its hearing examiner shall be bound by the usual common-law or statutory rules of evidence, or by any technical or formal rules of procedure. . . . The commission may make its investigation in such manner as in its judgment is best calculated to carry out justly the spirit of the Workmen's Compensation Act.

The Workers' Compensation Fund cites cases which they contend



show the Administrative Law Judge's actions prejudiced them or deprived the Fund of its Constitutional right to an impartial hearing. The Fund's position is without basis, however, since the factors of stress, fatigue, and amphetamine use were presented and addressed at the hearing and in subsequent submissions by the parties and were considered by Drs. Heilbrun and Perry. The Judge took no short cuts and the Fund had an opportunity to address all factors considered by him.

Even if this court disregarded Dr. Heilbrun's opinion and determined that the Administrative Law Judge improperly took judicial notice of the reference material, Mrs. Steward has provided sufficient evidence to establish medical causation.

As noted in the Allen case, a claimant can establish medical causation in several ways, since "the stress, strain, or exertion required by his or her occupation" and leading to injury or death may be shown by "evidence, opinion, or otherwise. ..."  
Id. at 9.

A Colorado Supreme Court decision, Industrial Commission v. Havens, 314 P.2d 698 (1957), deals with a fact situation similar to the present case and discusses how medical causation may be shown. In Havens, the court reversed a decision of the Industrial Commission denying compensation to an individual who was found dead in the cab of his truck ten minutes after leaving a restaurant where he had eaten lunch. The court noted that no medical examination of the body was performed and there was no autopsy. The coroner listed the cause of death as "coronary occlusion". Id. at 699-700. The decedent had been examined

by his company's doctor several days before his death and the doctor had noted no heart conditions or problems and stated that Mr. Haven's blood pressure was normal. Id. at 700.

Although neither the claimants nor the defendants presented any medical evidence linking the decedent's work activity to a coronary occlusion, Id. at 700, the court held that medical causation had been established:

[D]id the circumstantial evidence before the referee establish the causal connection between the occurrence and the death, or must claimants prove it by expert medical testimony? The un rebutted evidence of the preceding events leads to the conclusion that the over-exertion and possibly the blow from the handcar were the cause of the coronary occlusion. This conclusion is not negatived by any evidence in the record, and where as here a death occurs in the course of employment, within a short time, following a blow and overexertion as established by the evidence before the referee, a presumption arises that the injury arose out of the employment. We hold that in such circumstances the claimants were not obliged to establish a causal connection between the accident and resulting death by expert medical testimony. Id. at 701.

As in the Havens case, the facts relating to Mr. Steward's activities and schedule are undisputed. He was working under conditions of stress and extreme fatigue, and was stricken while driving his company truck and while complying with the rigorous schedule imposed on him by his employer. Medical causation has been established by Mrs. Steward in this proceeding even if Dr. Heilbrun's opinion and the judicially noted material were not considered, since no other causes for his death have been medically established.

The Fund claims the Commission erred in not referring the matter to a medical panel. As stated in Section 35-1-77, Utah Code Annotated 1953, as amended, "the Commission may refer

the medical aspects of the case to a medical panel. ..." (Emphasis added) Referral of matters to a medical panel is therefore discretionary. See Champion Home Builders v. Industrial Commission, 703 P.2d 306, 308 (Utah 1985).

Appellants assert that the present situation is one "where the evidence of causal connection between the work-related event and the injury is uncertain or highly technical", Champion Home Builders, supra, at 308. The undisputed evidence in this matter, however, establishes the causal connection between Mr. Steward's stress and fatigue and his death. Contrary to Appellants' assertions the circumstances surrounding Mr. Steward's death were clearly established and were tied by competent medical authority to his death.

POINT IV. THE INDUSTRIAL COMMISSION MET ITS DUTY TO  
REVIEW THE ENTIRE RECORD

The Workers' Compensation Fund asserts that the Industrial Commission erred by not reviewing the entire record in the matter as mandated by Section 35-1-82.54, Utah Code Annotated 1953, as amended, since the hearing was not transcribed until after the August 27, 1987 Order Denying Motion for Review. Even if the Commission did not have access to the transcript, which has not been established by the Fund, the Commission had the benefit of the Administrative Law Judge's summary of testimony (R. 248-250), which accurately summarized the evidence presented at the hearing. The Commission adequately considered the entire record in this proceeding.

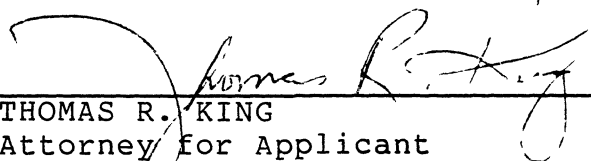
CONCLUSION

As found by the Administrative Law Judge and affirmed

by the Industrial Commission, Applicant Bernice Steward met her burden of establishing both legal and medical causation with respect to the work-related death of her husband on November 12, 1985. The trier of fact had before him no evidence establishing that Mr. Steward had a preexisting heart condition. In addition, he made no finding that Mr. Steward's use of amphetamines constituted a preexisting condition. There is no dispute that Mr. Steward was functioning under unusually stressful circumstances and was extremely fatigued. No medical evidence was provided by the Workers' Compensation Fund that considered the fatigue and stress elements or related them to Mr. Steward's death. Mrs. Steward, on the other hand, introduced the opinion of Dr. Heilbrun that her husband's death was medically linked to his employment-cause stress and fatigue. There is no basis in this proceeding to claim that the findings of the Administrative Law Judge, as affirmed by the Industrial Commission, were arbitrary or capricious or unsupported by any substantial evidence. The matter did not require submission to a medical panel and the ruling of the Industrial Commission should be affirmed.

DATED this 15 day of February, 1988.

DWIGHT L. KING & ASSOCIATES, P.C.

  
\_\_\_\_\_  
THOMAS R. KING  
Attorney for Applicant  
Bernice Steward

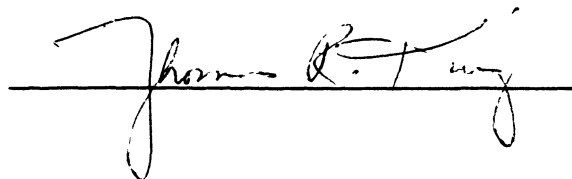
MAILING CERTIFICATE

Undersigned certifies that four (4) copies of the foregoing Brief of Respondents was mailed, postage prepaid, this 15 day of February, 1988 to the following:

James R. Black  
Kevin M. McDonough  
Black & Moore  
Attorneys for Defendants/Appellants  
261 East Broadway, Suite 300  
Salt Lake City, Utah 84111

Barbara Elicerio  
Industrial Commission of Utah  
160 East 300 South  
P.O. Box 45580  
Salt Lake City, Utah 84145-0580

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

A handwritten signature in cursive script, appearing to read "John R. Fung", is written over a horizontal line.

## APPENDIX

**35-1-77. Medical panel — Discretionary authority of commission to refer case — Findings and reports — Objections to report — Hearing — Expenses.**

Upon the filing of a claim for compensation for injury by accident, or for death, arising out of or in the course of employment, and where the employer or insurance carrier denies liability, the commission may refer the medical aspects of the case to a medical panel appointed by the commission and having the qualifications generally applicable to the medical panel set forth in section 35-2-56. The medical panel shall then make such study, take such X-rays

and perform such tests, including post-mortem examinations where authorized by the commission, as it may determine and thereafter make a report in writing to the commission in a form prescribed by the commission, and also make such additional findings as the commission may require. The commission shall promptly distribute full copies of the report of the panel to the applicant, the employer and the insurance carrier by registered mail with return receipt requested. Within fifteen days after such report is deposited in the United States post office, the applicant, the employer or the insurance carrier may file with the commission objections in writing thereto. If no objections are so filed within such period, the report shall be deemed admitted in evidence and the commission may base its finding and decision on the report of the panel, but shall not be bound by such report if there is other substantial conflicting evidence in the case which supports a contrary finding by the commission. If objections to such report are filed the commission may set the case for hearing to determine the facts and issues involved, and at such hearing any party so desiring may request the commission to have the chairman of the medical panel present at the hearing for examination and cross-examination. For good cause shown the commission may order other members of the panel, with or without the chairman, to be present at the hearing for examination and cross-examination. Upon such hearing the written report of the panel may be received as an exhibit but shall not be considered as evidence in the case except as far as it is sustained by the testimony admitted. The expenses of such study and report by the medical panel and of their appearance before the commission shall be paid out of the fund provided for by section 35-1-68.

**35-1-82.54. Review of cases and orders by commission —  
Procedure — Effect of award [Effective until  
January 1, 1988].**

The commission, upon referral of a case to it by an administrative law judge, or upon a motion being filed with it to review its own order, or an administrative law judge's supplemental order, shall review the entire record made in said case, and, in its discretion, may hold further hearings and receive further evidence, and make findings of fact and enter its award thereon. The award of the commission shall be final unless set aside by the Supreme Court as hereinafter provided

**Review of cases and orders by commission — Proce-  
dure — Effect of award [Effective January 1,  
1988].**

(1) When a case is referred to the commission by an administrative law judge, or when a motion is filed with the commission to review its own order or an administrative law judge's supplemental order, the commission shall review the entire record made in the case, may hold further hearings and receive further evidence, and shall make findings of fact and enter its award

(2) The award of the commission is final unless set aside by the Court of Appeals



**35-1-88. Rules of evidence and procedure before commission and hearing examiner—Admissible evidence.**—Neither the commission nor its hearing examiner shall be bound by the usual common-law or statutory rules of evidence, or by any technical or formal rules of procedure, other than as herein provided or as adopted by the commission pursuant to this act. The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the Workmen's Compensation Act.

The commission may receive as evidence and use as proof of any fact in dispute all evidence deemed material and relevant including, but not limited to the following:

- (a) Depositions and sworn testimony presented in open hearings.
- (b) Reports of attending or examining physicians, or of pathologists.
- (c) Reports of investigators appointed by the commission.
- (d) Reports of employers, including copies of time sheets, book accounts or other records.
- (e) Hospital records in the case of an injured or diseased employee.

**History:** L. 1917, ch. 100, § 88; C. L. 1917, § 3149; R. S. 1933 & C. 1943, 42-1-82; L. 1965, ch. 67, § 1.

**Compiler's Notes.**

The 1965 amendment rewrote this section which read: "The commission shall not be bound by the usual common law or statutory rules of evidence, or by any technical or formal rules of procedure, other than as herein provided; but may make its investigations in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this title."

## JUDICIAL NOTICE.

### Rule 201. Judicial notice of adjudicative facts.

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When discretionary.** A court may take judicial notice, whether requested or not.

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

**Advisory Committee Note.** — This rule is the federal rule, verbatim, and consolidates the law of judicial notice formerly contained in Rules 9 through 12, Utah Rules of Evidence (1971) and in Utah Code Annotated, § 78-24-1 (78-25-1) (1953) (superseded by this rule) into one broadly defined rule. The Utah Supreme Court has stated the rule with reference to judicial notice in *Little Cottonwood Water Co. v. Kimball*, 76 Utah 243, 267, 289 Pac. 116 (1930) where the court stated: "In short, a court is presumed to know what every man of ordinary intelligence must know about such things." See also *DeFusion Co. v. Utah Liquor Control Comm'n.* 613 P.2d 1120 (Utah 1980).

Subdivision (a) "governs only judicial notice of adjudicative facts," and does not deal with instances in which a court may notice legislative facts, which is left to the sound discretion of trial and appellate courts. Compare Rule 12, Utah Rules of Evidence (1971). Since legislative facts are matters that go to the policy of a rule of law as distinct from the true facts that are used in the adjudication of a controversy they are not appropriate for a rule of evidence and best left to the law-making considerations by appellate and trial courts.

Subdivision (b) is in accord with the *Little Cottonwood Water Co.* case, supra, and the substance of Rule 9(1) and (2), Utah Rules of Evidence (1971). Utah law presumes that the law of another jurisdiction is the same as that of the State of Utah and judicial notice has been taken from the law of other states and foreign countries. *Lamberth v. Lamberth*, 550 P.2d 200 (Utah 1976); *Maple v. Maple*, 566 P.2d 1229 (Utah 1977). The Utah court has taken judicial notice under Rule 9(2), Utah Rules of Evidence (1971) of the rules and regulations of the Tax Commission. *Nelson v. State Tax Comm'n.* 29 Utah 2d 162, 506 P.2d 437 (1973). The broad language of subdivision (b) is identical to Rule 201 of the Uniform Rules of Evidence (1974). Judicial notice of foreign law

is permissible under this rule. Provisions of this rule supersede Utah Code Annotated, Section 78-25-1 (1953) (superseded by this rule), since the statute is merely illustrative of items encompassed within the broad framework of this rule. The foreign law of some jurisdictions might best be left to proof through witnesses if the resort to sources available in the State of Utah is questionable.

Subdivision (c) is discretionary, but subdivision (d) requires the court to take judicial notice if requested by a party and if supplied with the necessary information to make a determination of whether to take judicial notice. Compare Rules 9(2) and 10(3), Utah Rules of Evidence (1971). The committee believes that Rule 201(d) simplifies the process of taking judicial notice of adjudicative facts by making it mandatory when a party makes a request therefor and supplies the court with the necessary information.

Subdivision (e) is similar to Rule 10(1), (2) and (3), Utah Rules of Evidence (1971).

Subdivision (g) is in accord with Rule 11, Utah Rules of Evidence (1971). The provision that in a criminal case the court shall instruct the jury that it may but is not required to accept as conclusive any fact judicially noticed has no counterpart in Utah Rules of Evidence (1971). Accord, *State v. Lawrence*, 120 Utah 323, 234 P.2d 600 (1951). See also, Amendment VI, Constitution of the United States.

**Cross-References.** — Court to impart matters of judicial knowledge to jury, § 78-21-3.

Jury bound to accept declaration of judicial knowledge, § 78-21-3.

Municipalities, notice of existence and classification, § 10-2-306.

Ordinance or private statute, notice of, Rule 901, U.R.C.P.

Seal of industrial commission, notice of, § 35-1-8.

Seal of public service commission, notice of, § 54-1-4.

J. JOSEPH PERRY, M.D., F.A.C.C.

CARDIOLOGY

COTTONWOOD MEDICAL TOWER  
5770 SOUTH 250 EAST, SUITE 340  
MURRAY, UTAH 84107

July 29, 1986

Shaun Howell  
Attorney at Law  
State Insurance Fund  
560 South 300 East  
P.O. Box 45420  
Salt Lake City, Utah 84145-0420

RE: Dale W. Steward  
#86-05663  
Inj: 11-11-85

Dear Counselor:

I have evaluated all of the information sent to me on this somewhat complicated case.

It seems clear that Mr. Steward was not conscious when his rig swerved to the left and ran off coming to rest on top of the median wall without apparently overturning or coming to an abrupt stop as it would with a collision. Additionally on arrival in the Emergency Department there was no gross evidence of physical injury or trauma according to the emergency physician. Additionally, the photographs sent to me demonstrate very little trauma to the rig he was driving. Thus, I think trauma can be excluded with a reasonable degree of confidence in this case.

Complicating the issue is the mention of narcolepsy in the medical record. The patient had given a history of sudden sleep attacks while driving and had been treated with amphetamines by his physician for several years prior to his demise. I find no studies in the record to document narcolepsy, thus this diagnosis is not secure in this individual.

Of the two scenarios which may have occurred, that is falling asleep then suffering a cardiac arrest sometime after contacting the median wall, or having the cardiac arrest while driving, only the latter seems to have firm medical support. Had he suffered narcolepsy while driving he would have awakened when he left the road (I speak from experience) and there seemed to be no event which would have been of sufficient severity to cause his death. It is remotely possible that the shock and fear of waking up in the middle of a serious accident would have been sufficient to engender the fatal cardiac arrhythmia, but this does not seem very probable.

In terms of medical probability it is most likely that he experienced a fatal cardiac arrhythmia while driving, lost consciousness a few seconds later thus losing control of the vehicle and having the accident as reported. It is possible that his dextroamphetamine was related to his death because it may worsen arrhythmias in susceptible individuals.

page 2 continued.....

An autopsy would have been supporting this diagnosis, but likely would not have confirmed it with an absolute degree of certainty. I suspect it would have shown amphetamines present and coronary artery disease present. At this point in time exhuming the body would not shed any light on the presence of amphetamine. It would, however, document the presence or absence of coronary artery disease. In the absence of drugs it is extremely unusual for cardiac arrest to occur in a person with normal coronary arteries. If the absence of coronary artery disease could be documented, then the scenario of striking the median wall, waking up and then suffering a fatal arrhythmia would become somewhat more plausible. Whether or not that has any legal significance is of course not within my area of expertise.

In summary in terms of reasonable medical probability, the patient suffered a fatal arrhythmia while driving and the accident was simply the result of his death and subsequent loss of control of the vehicle. While other possibilities exist, they are far less likely. To exume and perform a post-mortum examination of the body would alter those probabilities to an extent, but it is highly unlikely it would provide definitive answer.

I hope this has been helpful to you.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Perry' or similar, written in a cursive style.

J. Joseph Perry, M.D.

JJP/jv



M. Peter Heilbrun, M.D.  
Ronald I. Apfelbaum, M.D.  
LaVerne S. Erickson, M.D.  
Marion L. Walker, M.D.

July 25, 1986

Mrs. Bernice Steward  
1410 West Sixth South  
Salt Lake City, UT 84104

Dear Mrs. Steward:

I am enclosing the following letter. Please read through it and advise me if you feel it satisfactorily explains my thoughts on the industrially related nature of Dale's heart attack.

Regards,

*M. Peter Heilbrun M.D.*

M. Peter Heilbrun, M.D.

MPH/tw

Enclosure

(Tr:7/31/86)

Dictated by the doctor;  
signed in his absence.

EXHIBIT NO.

A-5

Division of Neurological Surgery

School of Medicine  
50 North Medical Drive  
Salt Lake City, Utah 84142  
(801) 581-6908



M. Peter Heilbrun, M.D.  
Ronald I. Apfelbaum, M.D.  
LaVerne S. Erickson, M.D.  
Marion L. Walker, M.D.

July 25, 1986

To Whom It May Concern:

Re: Dale Steward

Mr. Dale Steward was treated by me over several years, from the time of his industrial injury of August 1, 1975, to his death in 1985.

I last saw Mr. Steward on July 29, 1985, at which time he was having further neck pain which suggested evidence of persistent degenerative osteoarthritis without evidence of significant root compression. In addition, he had evidence of left shoulder pain secondary to either bicipital tendonitis impingement syndrome of the humeral head or a small rotator cuff tear. He improved with local injection by Dr. Ronald Mann.

It should be noted that, although Mr. Steward had evidence of musculo-skeletal disease, his apparent cause of death was a myocardial infarction while driving a truck.

He had no prior history of cardiac disease, thus his death should be considered to be an industrial-related cardiac event.

Regards,

*M. Peter Heilbrun M.D.*

M. Peter Heilbrun, M.D.  
Professor and Head  
Division of Neurosurgery

MPH/tw

(Tr:7/31/86)

Dictated by the doctor;  
signed in his absence.

EXHIBIT NO. A-6

Division of Neurological Surgery

School of Medicine  
50 North Medical Drive  
Salt Lake City, Utah 84142  
(801) 581-6908



M. Peter Heilbrun, M.D.  
Ronald I. Apfelbaum, M.D.  
LaVerne S. Erickson, M.D.  
Marion L. Walker, M.D.

November 28, 1986

Mr. Thomas R. King  
Suite 205, Sentinel Building  
2121 South State Street  
Salt Lake City, Utah 84115

Dear Mr. King:

Thank you for your letter dated October 30, regarding the description of events leading to possible fatigue and stress surrounding Mr. Steward's untimely death on November 12 or 13, 1985.

In addition to your letter, I reviewed the letter of Dr. J. Joseph Perry. I agree with Dr. Perry that there was medical probability that Mr. Steward suffered a fatal arrhythmia while driving, resulting in his loss of control of the vehicle and the subsequent accident.

The issue of narcolepsy as a contributing factor is a possibility. I believe a review of the records of Dr. Gerald Moress would show that, in fact, he had been diagnosed as having narcolepsy and was actively being treated with amphetamine medications.

I would also state that I knew Mr. Steward as a patient for many years dating back to his industrial injury of August 1, 1975, and although he had multiple medical problems, he always managed to return to the work place and perform extremely well.

As I stated in my note of July 25, 1986, addressed "To Whom It May Concern", I believe that, with the stress surrounding the driving and delivery requirements of Mr. Steward's job, I agree with Dr. Perry that there is reasonable medical probability that the patient suffered a fatal arrhythmia while driving and, thus, his death should be considered an industrial related cardiac event. I do not feel there would be any benefit in performing a postmortem examination of his body. His death occurred while he was working and performing the required conditions of his employment. Because the medical examiner in Colorado did not perform an autopsy at the time of death, it should not be a factor in the denial of benefits to his widow by the Utah State Industrial Commission.

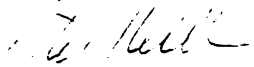
Division of Neurological Surgery

School of Medicine  
50 North Main Street  
Salt Lake City, Utah 84143  
(801) 581-6008

Thomas R. King  
November 28, 1986  
Page Two

I hope this information is helpful.

Regards,

A handwritten signature in cursive script, appearing to read "M. Peter Heilbrun".

M. Peter Heilbrun, M.D.

MPH/dr

(Tr:12/8/86)