

1941

# General Mills, Inc. et al v. Industrial Commission of Utah and Olgan Lassen Hansen : Brief of Defendant

Utah Supreme Court

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Geo G. Armstrong; Dan B. Shields; Attorneys for Defendants;

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IN THE

# Supreme Court

OF THE

## STATE OF UTAH

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GENERAL MILLS, INC., a corporation of the State of Delaware, doing business under the trade name of Sperry Flour Company, Western Division General Mills, Inc., and ZURICH GENERAL ACCIDENT & LIABILITY INSURANCE COMPANY, LTD.,

*Plaintiffs,*

vs.

INDUSTRIAL COMMISSION OF UTAH and OLGA LASSEN HANSEN,

*Defendants.*

CASE NO.  
6382

Defendant's  
Brief

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GEO. G. ARMSTRONG,  
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*Attorneys for Defendants.*

**FILED**

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# INDEX

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	Page
Additional Statement of Facts.....	2-7
Argument .....	7-12

## TABLE OF CASES

Aetna Life Insurance Co. v. Industrial Commission, 64 Ut. 415; 231, P. 442.....	10
Andreason v. Industrial Commission, 98 Ut. 551; 100 P. 2nd 202.....	11
Bingham Mines Co. vs. Allsop, 59 Ut. 306; 203 P. 644.....	10
Burgener v. Industrial Commission, 97 Ut. 15; 89 P 2nd 241.....	11
Continental Casualty Co. v. Industrial Commission, 75 Ut. 220; 284 P. 513.....	11
Denver & Rio Grande Western Railroad Co. v. Industrial Commission, 74 Ut. 316; 279 P. 612.....	11
Diaz, et al, v. Industrial Commission, 80 Ut. 77, 94, 95; 13 P 2nd 307.....	11
Hutchings v. Industrial Commission, 96 Ut. 399; 87 P 2nd 11 .....	10
McVicar v. Industrial Commission, 56 Ut. 342; 191 P 1089 .....	10
Wilson v. Industrial Commission, 99 Ut. 524; 108 P 2nd 519.....	10

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**DEFENDANTS' BRIEF**

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This matter is here on the application of plaintiffs to review an award of the Industrial Commission of Utah to Olga Lassen Hansen for the death of her husband, Marius Hansen, as the result of injuries sustained by

him while in the course of his employment with the plaintiff, General Mills, Inc., a corporation, doing business under the trade name of Sperry Flour Company.

The plaintiffs have made a statement of the case and a so-called Statement of Facts, but we believe that this should be amplified and are accordingly presenting the following:

### ADDITIONAL STATEMENT OF FACTS

There is now of record, testimony taken as a deposition on January 2, 1941, before Douglas A. Campbell, Referee, in Los Angeles, California, of Curtis W. Stratton in which the following appears:

The witness in 1938 was living in Utah, knew Marius Hansen, the deceased, and saw him on March 16th of that year at Provo, Utah and also on March 17th in his car on Juab Hill, about on the line between Utah and Juab Counties, about eleven o'clock a. m., when he saw, in the rear vision mirror of his own car, Hansen's car coming around the curve headed for the west side of the road. Just before reaching it, Hansen turned his car to the left and seemed to make another turn to straighten it up. The car turned again to the right a little ways and then to the left and almost straight across the road into the barrow pit, at a speed of from twenty to twenty-five miles an hour. The car seemed to be out of control doing this zigzagging. It went off on the east side of the road and stopped suddenly against the embankment. The road was a little slippery from snow

that morning. As soon as he could stop his car, he backed up to the point close to Hansen's car and got out, went over to him and saw it was Mr. Hansen, whom he had known about ten to twelve years and who was a representative of the Sperry Flour Company. The Hansen car was off in the ditch which was about three or four feet deep and he couldn't get it back on the road of its own power. The rear wheels were off the shoulder of the road about five to six feet from the pavement and the front wheels were up against the embankment on the east side. The road was hard-surfaced and the snow was around three inches deep. Mr. Hansen was just sitting at the wheel.

The witness didn't remember much of the conversation when he first arrived, but after they had the car back on the road he asked him how the accident happened. Mr. Hansen said "he just lost control of the car and skidded on the wet pavement; and I asked him how he felt and he said, 'All right, I guess' or something to that effect — that he didn't say he was all right, nor he didn't say he was hurt. He said something about him being shaken up—that may not have been the word but the effect, that was what it was."

Mr. Stratton couldn't just describe Hansen's looks, but he looked like he was either hurt or scared. He did not notice if there was any physical damage to the front of the car. Three or four other parties helped to get the car back on the road. He was about three hundred feet

ahead of Hansen's car at the time of the occurrence. The road at that point was a dugway built on the side of the hill. It is called in that part of the country the Juab Dugway turn. It is rather a steep grade; a high gear road, and makes a sharp turn there and then points itself a little to the east and goes down the hill, and down at the bottom of the hill is a culvert or small bridge. There is a little banking on the turn; the road is slightly higher in the center and slopes a little both ways, but it is almost flat—a little rounding but not like the earlier roads.

Mr. Stratton noticed where the car first skidded off the pavement to the west, near the railing. The car was on a skid, sliding, and it seemed the car would have gone into the railing if it hadn't been for the gravel shoulder off the pavement. It seemed when the wheels hit the gravel Hansen was able to turn the car back to the pavement again. Hansen made a small "s" turn; when he hit the pavement he turned it back again and then he went east and off the road. The car was on a little angle, about a forty-five degree angle. The front wheels were off the shoulder. The embankment along there where the safety brace starts would be about ten to twelve feet high, higher than the car. The witness was the first person to get back there and Mr. Hansen was sitting in the driver's seat. He didn't notice any bleeding or cut, and as he remembers the windshield was not broken or knocked off. The car was not put back on the

highway on its own power. They all helped him while he ran the car; he had it in reverse and the other persons and Mr. Stratton assisted by pushing. He remembers they had quite a job. Mr. Hansen was in the car driving it or backing it up and everybody grabbed hold and pushed it back. When back on the road, Mr. Hansen did not get out of the car. Mr. Stratton didn't notice any damage to the car; all cars were pretty splashed with snow and mud at that time. The snow on the highway was slushy.

Referring to the testimony of Olga Hansen at the hearing held in Ogden on June 5, 1939, when she was asked what she was able to observe about the physical condition of her husband, the first A on page 12 reads: “\* \* \* He always held his side and every time he would eat he would hold his side. I asked him what was the matter and he said I have a little pain. He is a man that never said much about it. \* \* \*” and on page 15 the last A is: “\* \* \* He never could eat a meal about that time, but still he would have gone to work if it would have killed him. \* \* \*” and on page 16 the last A is: “\* \* \* He didn't even write me about his sickness. My sister said he was getting worse every day. He didn't even know that my sister wrote that letter.” Continuing the testimony of Mrs. Hansen, on page 19 is shown: “Q. You don't know what his condition was between the time he left California in November and when you came back in March? A He never mentioned anything to me. Q Did he write to you? A Oh yes, I got a letter from



him every few days, but he would not write me about it.” On page 20 is the following question and answer: “But in spite of the fact that he was not able to work at that time he did seek work from Sperry’s? Yes, I think he did. Maybe he could have done it, but anyway he got into his head that is what he wanted more than anything else in his life.”

In the Official Report of Proceedings filed June 25, 1941, on page 6 Mr. Phillip M. Thompson testified that he was the District Manager of Sperry Flour Company and was such on March 17, 1937; that he knew Marius Hansen and that “he was our feed supervisor.” On page 7 the question was asked: “I will ask you from the 17th of March 1939 Mr. Hansen was working for the Sperry Flour Company?” Answer: “Yes.” Question: “How long had he been working for the company before that?” Answer: “I could not tell you exactly, several years.” Question: “Now his line of work—will you just tell the Commission what his line of work was and what he did?” Answer: “He was supervising man of the several activities in the feed department. We have several feed salesman. He made various territories and he was supposed to supervise their activities and was responsible for the volume of business that we secured in our feed department.” Question: “In that sort of work did he have occasion to travel hither and yon in the State of Utah and other places?” Answer: “Yes.” On page 8: Question: “1938, yes?” Answer: “The 17th was Thursday.” Question: “Now was Mr. Hansen in your employ on

that date?" Answer: "He was." Question: "Do you have a record of where he was and what he was doing?" Answer: "Well, according to this record I have he rode from Provo to Richfield where he held a meeting on the night of the 17th." On page 9 there is another answer: "The records show he was in our employ."

On page 10 is shown a question by Com. Knerr: "I take it Mr. Thompson that it is a fact that Mr. Hansen on March 17, 1938 was employed by your company and that he was paid a wage amounting to \$240.00 per month working six days per week?" Answer: "That is right. I would like to supplement that by saying he could work seven if he wanted to." On page 11: Question: "On March 17th he was in line of his regular procedure followed by him in his work?" Answer: "Yes." Question: "And about that there can be no question?" Answer: "That is right."

## ARGUMENT

As is said on page 7 of plaintiffs brief, "There seems to be little room for arugment under the evidence in this case." From the evidence introduced, there can be no possible question but what on March 17, 1938, Marius Hansen was a regular employee of the Sperry Flour Company and that he was going from Provo, Utah to Richfield, Utah where he held a meeting in line with his duties and employment on the night of March 17, 1938; and as stated in the testimony of his wife on page 12 of the testimony taken at Ogden on June 5, 1939, he was

a man that never said much about being in pain, but when she asked him what was the matter he said, "I have a little pain." Mrs. Hansen's testimony shows, on page 15, that "He never could eat a meal about that time, but still he would have gone to work if it would have killed him."

Mr. Hansen was a determined man who, no matter how he suffered, would have continued on to Richfield to hold that meeting. The fact that he did not complain to the witness Miss Peterson of any disability or show signs of injury as she rode with him on March 17th or 20th would be no proof that he did not have a disability or pain. Also, the fact that he drove his automobile after the accident of March 17th would not prove any such situation. She testified that he also continued to drive his car after the occurrence of March 20th, and the record shows that he then drove on to Ogden and reported his doings, as he apparently was required to do, evidenced by a report made by R. L. Hickman in Ogden on March 25, 1938, setting forth Mr. Hansen's place of residence, 1737 Washington Blvd., Ogden, Utah.

According to Miss Peterson's testimony, Mr. Hansen drove on to Gunnison and stayed there the night of the 20th. While she says that his car left the road because he tried to get off the highway to avoid collision with another car which hit the left front wheel and fender and damaged the fender, wheel and running board (not enough to disable either car, however, so that either was prevented from continuing on with his journey), the

other car did not even have to stop. There is no evidence that he was thrown against the wheel of his car. The expressions "had a lump in his stomach" or his "heart in his mouth" are often used when a person goes through some exciting experience; and even if it should be considered to show his condition after the accident, it does not prove that he didn't have a stomach condition before.

The accident of March 17th was exactly the kind that would cause the condition Mr. Hansen was in when he returned home. His automobile was out of control, zigzagging and skidding across the slippery road, went off the dugway into a ditch three or four feet below the level of the road, and came to a sudden stop with the front wheels up against a ten to twelve foot embankment. He could not extricate the car on its own power, but had to have help to get it back on the road.

Mr. Hansen, of course, knew that he was to be in Richfield that night to conduct the meeting to be held there about the company's business and, being the determined man he was and so definitely wrapped up in the interest of his company, he forced himself to carry on, no matter how he felt or what his condition was; even if it was so serious that he ultimately died from its effects. He then started to return to headquarters promptly when he met with another accident which, except for a conclusion testified to by a woman witness, was in no way as severe as the one on the 17th and, even

if it could have had any serious effect, only would add to the results of the first injury.

Dr. F. K. Root testified that Mr. Hansen's condition following the injury when he first saw him appeared to be a rupture into the stomach and a bad liver condition. On page 6 of the testimony taken July 26, 1939, replying to a query about Mr. Hansen's general appearance on or about March 15, 1939, Dr. Root testified: "He was very quiet and didn't have much to say. I asked him how he felt naturally, and he didn't have much to say. He said he didn't feel very well." That, even to his doctor.

A situation in anywise comparable to that appearing in this case can be found in none of the cases cited by the plaintiff. However, in the case of Aetna Life Insurance Co. v. Industrial Commission, 64 Utah 415, 231, P. 442, at page 421 of 64 Utah this court says:

"This Court is reluctant to set aside a finding of fact made by the Industrial Commission. It will not do so when the finding is fairly supported by legal evidence."

and we submit that there is evidence here which supports the claim of plaintiff.

See also :

Wilson v. Industrial Commission, 99 Ut. 524; 108 P. 2nd 519

Bingham Mines Co. v. Allsop, 59 Ut. 306; 203 P. 644

McVicar v. Industrial Commission, 56 Ut. 342; 191 P. 1089

Hutchings v. Industrial Commission, 96 Ut. 399; 87 P. 2nd 11

Burgener v. Industrial Commission, 97 Ut. 15;  
89 P. 2nd 241

Andreason v. Industrial Commission, 98 Ut. 551;  
100 P. 2nd 202

In Continental Casualty Co. v. Industrial Commission, 75 Ut. 220; 284 P. 513, this Court says:

“In reviewing a record in compensation proceedings, every legitimate inference which can arise from evidence must be drawn in favor of employee, where the Commission has made a finding and award in his favor, but there must be evidence and not mere conjecture.”

In Diaz, et al, v. Industrial Commission, 80 Ut. 77, 94, 95; 13 P. 2nd 307, this Court says:

“Under the Statute the employer is required to make and file a report with the Commission of all accidental injuries of his employees arising out of or in the course of their employment. The Company made reports and they were put in evidence without objection. \* \* \* Such statements or admissions of the defendant company are alone sufficient to sustain an injury in the course of his employment. *The competency or relevancy of them cannot be affected by the question whether the party making them had personal knowledge or merely information as to the fact admitted.*” (Italics ours.)

Denver & Rio Grande Western Railroad Co. v. Industrial Commission, 74 Ut. 316; 279 P. 612:

“When an award of compensation has been annulled and Industrial Commission again considers questions of whether or not compensation should be allowed, Commission may, by reason of provisions of Comp. Laws 1917, 3149 (now 42-1-82, Rev. Statutes, 1933) consider evidence received at hearings held before award was annulled.”

We believe that there is sufficient evidence in the record to support the finding that the accident occurred on March 17, 1938 as alleged, and also that there is evidence, as well as the admissions of the plaintiff, that the accident occurred in the course of employment and that he died from the effects of the accident of March 17, 1938.

We submit, therefore, that there is ample evidence in the record to substantiate:

1. That on March 17, 1938, Marius Hansen was an employee of Sperry Flour Company.
2. That in the regular and usual course of his business he was driving his automobile between Provo and Richfield, Utah, on said March 17, 1938, when at a point described in the evidence as Juab Dugway his car, traveling twenty to twenty-five miles per hour, skidded, zigzagged, went out of control and slipped off the highway into the ditch or barrow pit and stopped when it struck the bank; that said ditch was three or four feet deep and the embankment against which the car smashed was ten to twelve feet high.
3. That he received injuries in said accident and that such injuries resulted in his being hospitalized and finally in his death.

The award should be affirmed.

Respectfully submitted,

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