

1986

William Michael Posso v. Cherne Construction, defendant employer and Wausau Insurance Company, defendant insurer : Reply Brief

Utah Supreme Court

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Sherlynn W. Fenstermaker; attorney for respondent.

Robert W. Brandt, Michael K. Mohrman; Richards, Brandt, Miller and Nelson; attorneys for appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH

DOCKET NO. 860091

WILLIAM MICHAEL POSSO,

Applicant/Respondent,

vs.

CHERNE CONSTRUCTION, defendant
employer and WAUSAU INSURANCE
COMPANY, defendant insurer,

No. 860091

Defendant/Applicants.

AMICUS CURIAE REPLY BRIEF
OF INTERMOUNTAIN POWER AGENCY

WRIT OF REVIEW FROM THE INDUSTRIAL COMMISSION
STATE OF UTAH

HENRY K. CHAI II
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, UT 84145
Telephone: (801) 521-9000
Attorneys for Intermountain Power
Agency

SHERLYNN W. FENSTERMAKER
P.O. Box 559
Springville, UT 84663
Attorney for Respondent
William Michael Posso

ROBERT W. BRANDT
MICHAEL K. MOHRMAN
RICHARDS, BRANDT, MILLER & NELSON
CSB Tower, Suite 700
50 South Main Street
P.O. Box 2465
Salt Lake City, UT
Attorneys for Appellant
Cherne Construction

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HENRY K. CHAI II
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, UT 84145
Telephone: (801) 521-9000
Attorneys for Intermountain Power
Agency

SHERLYNN W. FENSTERMAKER
P.O. Box 559
Springville, UT 84663
Attorney for Respondent
William Michael Posso

ROBERT W. BRANDT
MICHAEL K. MOHRMAN
RICHARDS, BRANDT, MILLER & NELSON
CSB Tower, Suite 700
50 South Main Street
P.O. Box 2465
Salt Lake City, UT
Attorneys for Appellant
Cherne Construction

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In his brief, respondent argues that he was on the "threshold" of the premises of his employer and that the special hazards exception applies. Intermountain Power Agency has already addressed this special hazards exception in its brief.

Regarding respondent's "threshold" argument, two observations are in order.

First, the Industrial Commission did not find that the respondent was on the premises at the time the injury occurred. The fact that the special hazards exception was relied on by the Industrial Commission evidences that the premises rule was

not applicable.

Second, the argument made regarding the premises rule was clearly rejected by this court in Soldier Creek Coal Co. v. Bailey, 709 P.2d 1165 (Utah 1985). In that case, the employee was travelling from Price, Utah to the mining site on Utah Highway 381. The highway was the only road leading to the mine. From Price to the mine, the road was paved. Thereafter, it was gravelled. Bailey was injured approximately a third of a mile from the mine property. The applicant argued:

[T]hat whenever there is a single practical route to a place of employment, then travel on that road by an employee going to or from work is sufficiently connected to the job that the employer should be responsible for all hazards of the road, special or ordinary. 709 P.2d at 1167.

Interestingly enough, the applicant there relied principally on the decision of Park Utah Consolidated Mines Companies vs. Industrial Commission, 103 Utah 64, 133 P.2d 314 (1943).

This court rejected Bailey's argument and declined to "modify the premises rule to reach occurrences beyond the employer's boundaries that are not covered by this special hazards rule." 709 P.2d at 1165. This court went on to state that:

The employer's property line provides a bright line test for application of the premises rule, based on the logic that while the employee is on the employer's premises, his connection with employment is both 'physical and tangible.' 1A Larson supra at § 15.12(a). If the premises rule were distorted to cover this case, it would create a distinction difficult to justify and hard to apply in future cases. 709. P.2d at 1165.

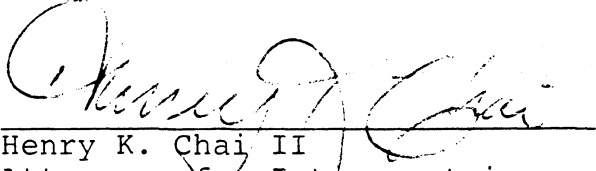
Respondent here argues that "once he has reached the primary

or only means of entering his employer's premises even if that means is not a part of his employer's property" he is within the employer's premises. Respondent cites Park Utah in support of this claim. This is the same argument made in Bailey. As in Bailey, this court should reject this argument.

DATED this 8th day of October, 1986.

SNOW, CHRISTENSEN & MARTINEAU

By


Henry K. Chai II
Attorneys for Intermountain
Power Agency

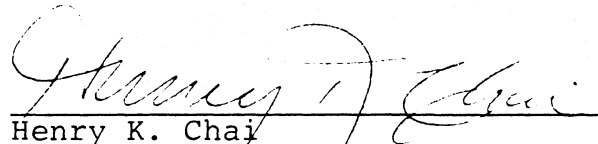
CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 1986,
four copies of the foregoing Amicus Curiae Reply Brief were
mailed to the following counsel:

Industrial Commission of Utah
P.O. Box 45580
Salt Lake City, UT 84145-0580

Sherlynn W. Fenstermaker, Atty.
P.O. Box 559
Springville, UT 84663

Robert W. Brandt, Atty.
Michael K. Mohrman, Atty.
RICHARDS, BRANDT, MILLER & NELSON
CSB Tower, Suite 700
50 South Main Street
P.O. Box 2465
Salt Lake City, UT 84110


Henry K. Chai
Attorneys for Intermountain
Power Agency