

2008

# Jonathan Hall v. Jason Steimle : Brief of Appellant

Utah Court of Appeals

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Gary T. Wright; Kipp & Christian; Attorney for Defendant/Appellee.

Rex I. Eagar; Ivie & Young; Attorney for Appellant.

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**IN THE UTAH COURT OF APPEALS**

---

JONATHAN HALL, : Appellate Case No. 20080486-CA  
Plaintiff/Appellant, :  
vs. : ORAL ARGUMENTS REQUESTED  
JASON STEIMLE, :  
Defendant/Appellee. :

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**BRIEF OF APPELLANT**

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**APPEAL FROM JUDGMENT OF THE FOURTH DISTRICT COURT  
HONORABLE JAMES R. TAYLOR PRESIDING**

---

Gary T. Wright, #10994  
KIPP & CHRISTIAN  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Attorney for Defendant

Rex I. Eagar, #9559  
IVIE & YOUNG  
226 West 2230 North, Suite 110  
Provo, UT 84604  
Attorney for Plaintiff

FILED  
UTAH APPELLATE COURT

DEC 30 2008

**IN THE UTAH COURT OF APPEALS**

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JONATHAN HALL,	:	Appellate Case No. 20080486-CA
Plaintiff/Appellant,	:	
<b>vs.</b>	:	ORAL ARGUMENTS REQUESTED
JASON STEIMLE,	:	
Defendant/Appellee.	:	

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Gary T. Wright, #10994  
KIPP & CHRISTIAN  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Attorney for Defendant

Rex I. Eagar, #9559  
IVIE & YOUNG  
226 West 2230 North, Suite 110  
Provo, UT 84604  
Attorney for Plaintiff

## **LIST OF ALL PARTIES**

The caption of this case on appeal contains the names of all parties.

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Godesky v. Provo City Corp., 690 P.2d 541, 544 (Utah, 1984)

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Mast v. Overson, 971 P.2d 928, 931 (Utah Ct. App. 1998)

Prince v. Bear River Mut. Ins. Co., 2002 UT 68, 56 P.3d 524

Robertson v. Sixpence Inns of Am., Inc., 163 Ariz. 539, 546, 789, P.2d 1040, 1047 (1990) (en banc)

Steffensen v. Smith's Mgmt. Corp., 820 P.2d 482, 487 (Utah Ct.App.1991)

Walton v. Gallbraith, 15 Mich.App. 490, 166 N.W.2d 605, 606 (1969)

## **JURISDICTIONAL STATEMENT**

This matter involves the final decision and order of the Fourth District Court in the case of Hall v. Steimle. As a result, this Court has jurisdiction pursuant to: Utah Code Ann. §78A-3-102(3).

## **STATEMENT OF THE ISSUE**

The issues raised in this appeal arose out of a grant of summary judgment for defendant in a personal injury lawsuit. In granting summary judgment the trial court held that because the plaintiff had not designated a medical expert, the plaintiff could not establish causation. The trial court found that neck and back injuries suffered by a plaintiff with pre-existing neck and back injuries is an injury which “involves obscure medical factors which are beyond an ordinary lay person’s knowledge”. In so finding, the trial court stripped the jury of its role as fact finder. The trial court’s order granting summary judgment is attached as Addendum One. Petitioner’s notice of appeal is attached as Addendum Two.

**Issue for review:** Whether a Plaintiff, with pre-existing neck and back injuries, who is claiming neck and back injuries as a result of an automobile accident is required to hire an expert witness to testify solely as to causation when his treating doctors have already been identified as potential witnesses and the Utah Court of Appeals has previously ruled that neck and back injuries resulting from automobile accidents, “involve medical damages within the common experience of a layperson” *Beard v. K-Mart Corporation*, 12 P.3d 1015, 1018 (Utah App. 2000).

**Standard of review:** DeNovo; "'Because summary judgment is granted as a matter of law, [appellate courts] give the trial court's legal conclusions no particular deference.'" Mast v. Overson, 971 P.2d 928, 931 (Utah Ct. App. 1998) (citation omitted).

**Issue for review:** With respect to causation, does the fact that a plaintiff begins experiencing pain on the day of the accident establish a *prima facie* case of causation to be submitted to a jury where the defense has misrepresented to the trial court that the plaintiff did not begin experiencing pain until a couple days after the accident?

**Standard of review:** DeNovo; "'Because summary judgment is granted as a matter of law, [appellate courts] give the trial court's legal conclusions no particular deference.'" Mast v. Overson, 971 P.2d 928, 931 (Utah Ct. App. 1998) (citation omitted).

### **STATEMENT OF THE CASE**

This is a personal injury case seeking compensation for injuries and damages suffered by Jonathon Hall and alleged to have been caused by the negligence of Jason Steimle.

The complaint was filed in Fourth District Court on December 9, 2004. Service was accepted by Defendant's attorney on February 15, 2006. Defendant's Answer was filed on or about February 17, 2006.

A stipulated discovery plan was filed on or about March 9, 2006. The discovery plan called for all discovery to be completed by January 22, 2007. Plaintiff's expert reports were due November 22, 2006.



An amended stipulated scheduling order was filed on or about March, 26, 2007. The amended discovery plan called for all discovery to be completed by August 15, 2007. Plaintiff's expert reports were due June 1, 2007.

Defendant moved for summary judgment on December 5, 2007. Plaintiff filed his opposition to Defendant's motion for summary judgment on December 20, 2007. Defendant filed a reply memorandum in support of his motion for summary judgment on January 4, 2008.

Oral arguments were had before Judge Taylor on March 25, 2008. At the conclusion of oral arguments, Judge Taylor granted Defendant's motion for summary judgment. The final order was prepared by defendant and signed by Judge Taylor on April 25, 2008.

Plaintiff filed his notice of appeal with the district court on May 27, 2008. This appeal was accepted by the Utah Supreme Court and transferred to the Utah Court of Appeals on June 4, 2008. Plaintiff filed a docketing statement with the Utah Court of Appeals on June 26, 2008. On October 30, 2008, the Utah Court of Appeals gave plaintiff notice that plaintiff's appellant brief was due on or before December 12, 2008.

### **STATEMENT OF FACTS**

On December 11, 2000, Jonathon Hall was riding as a passenger in Defendant's vehicle as they traveled from Rexburg, Idaho to Salt Lake City, Utah. (Complaint, ¶ 3, attached as Addendum Three; Hall Deposition, p. 23, lines 13-23, attached as Addendum Four).

As the vehicle approached the 33<sup>rd</sup> South freeway exxhit on I-15, Defendant saw that a car was off the road. In response, Defendant slowed his vehicle from freeway speeds to about 40 to 45 miles per hour. Prior to slowing, Mr. Hall estimated that Defendant had been traveling between 65 and 70 miles per hour. (Complaint, ¶ 3; Hall Deposition, p 20, lines 14-18; p. 69, lines 5-12).

In the early morning hours, while attempting to slow down, Defendant's vehicle began to slide on black ice. After sliding 20 to 30 yards, the vehicle collided with the retaining wall of the off-ramp. (Hall Deposition, p 20-21, lines 21-22, 1-2, 17-18).

At the point of impact, Mr. Hall's head moved to the side. Mr. Hall's head did not hit a window or any objects inside of the vehicle. (Hall Deposition, pp. 28-29, lines 14-25, 1).

Following the accident, Mr. Hall returned home and fell asleep. Upon awakening later that morning, Mr. Hall experienced pain in his neck and back:

- Q. So the first day you experienced pain, you went and saw Dr. Anderson?
- A. Yes. I called him and said, "I need to come in right away." Because I woke up in a lot of pain. Couldn't move my head at all.
- Q. Describe the pain that you experienced on that very first day you felt it.
- A. Well, I woke up in the morning and I couldn't move my head. I remember when I – I simply called him and told him that I needed to come in and have that adjusted because it was in a lot of pain.

(Hall Deposition, p. 32, lines 7-17).

Mr. Hall scheduled and attended an appointment with his chiropractor,

Dr. Anderson, later on the day of the accident. (Hall Deposition, pp. 30-31, lines 7-8, 25, 1).

On December 11, 2000, the day of the accident, Mr. Hall presented to the Anderson Chiropractic Center with complaints of neck pain. (Anderson Chiropractic Notes, attached as Addendum Five).

Mr. Hall had previously consulted with Dr. Anderson regarding his neck pain prior to the motor vehicle accident at issue in this case. Two months earlier, on October 4, 2000, Mr. Hall received his initial chiropractic assessment from Anderson Chiropractic Center, at which time he complained of neck and back pain, rating his neck pain at a 4 on a scale from 1 to 10. (Id.)

Mr. Hall also testified that his October 2000 visit to Anderson Chiropractic was not to treat a specific injury but was to receive preventative chiropractic care. (Hall Deposition, pp. 61-62, lines 15-25; 1-5).

Mr. Hall had suffered neck and back injuries prior to the accident at issue in this case. In discovery responses he stated: "Plaintiff had a whiplash injury in the summer of 1998/1999 when he dove into a shallow lake. He was treated by Dr. Frank Smith [in Wichita, Kansas]. He sustained a back injury and whiplash injury from hitting his chin on the lake bed.") Plaintiff's Answers to Defendant's First Set of Interrogatories, p. 6; attached as Addendum Six).

Mr. Hall described the pain he experienced on the day of the accident as being different pain than what he had experienced following the diving accident. (Hall

Deposition, p. 60, lines 2-10).

Mr. Hall described the pain he experienced following the December 11, 2000 accident as being a lot more painful than his previous injuries. (Hall Deposition, p. 61, lines 3-9).

Mr. Hall testified at his deposition that there was a noticeable difference in the way his neck felt prior to the December 2000 accident and the way it felt after the December 2000 accident. (Hall Deposition, p. 62, lines 6-11).

On December 9, 2004, Mr. Hall initiated this lawsuit, asserting negligence claims against Defendant in connection with the December 2000 motor vehicle accident. (Complaint, ¶ 5).

In his Complaint, Mr. Hall alleges that he “suffered permanent injuries to his neck and back,” caused by Defendant’s alleged negligence. (Complaint, ¶ 5).

Mr. Hall designated his treating physician, Dr. Anderson, as a witness in his initial disclosures on April 4, 2006, specifically stating that “It is anticipated that Dr. Anderson will testify consistent with his medical records.” (Plaintiff’s Rule 26(a) Initial Disclosures, attached as Addendum Seven).

Mr. Hall did not designate a medical expert prior to the cutoff for doing so.

### **SUMMARY OF THE ARGUMENT**

Under Utah case law, cases involving injuries to the neck, back and shoulder resulting from car accidents involve medical damages within the common experience of a layperson and therefore expert medical testimony is not required to establish causation.

The plaintiff in this case can establish a *prima facie* case of causation through the testimony of the plaintiff who will testify as to the circumstances of the accident and the fact that he began experiencing severe pain in his neck and back on the day of the accident. He will testify that the pain he experienced was of a different kind than what he experienced prior to the accident. He will testify that he sought chiropractic care prior to this injury for preventative reasons. Mr. Hall's treating chiropractor will testify as to his condition prior to this accident and as to the basis of the treatments he received. Mr. Hall's treating chiropractor will testify as to his condition following this accident as observed on the day of the accident and note that the injuries he sought treatment for were different than the conditions for which he had been receiving treatment..

Furthermore, there are disputed material facts concerning when Mr. Hall began experiencing pain and the nature of his chiropractic treatment before and after the accident. Finally, because Mr. Hall has established a *prima facie* case of causation, the trial court improperly stripped the jury of its role as fact finder.

### **ARGUMENT**

#### **Plaintiff does not need a expert medical testimony to establish a *prima facie* case of causation**

In Utah, Plaintiffs carry the "burden [of] establish[ing] a *prima facie* case of negligence," Clark v. Farmers Ins. Exch., 893 P.2d 598, 601 (Utah Ct.App.1995), including "proximate and actual causation of the injury," *id.* at 600; see also Jackson v. Colston, 116 Utah 295, 209 P.2d 566, 568 (1949) ("It is fundamental that the burden rests

upon the plaintiff to establish the causal connection between the injury and the alleged negligence of the defendant.”). “[T]he causal connection between the alleged negligent act and the injury is never presumed and ... this is a matter the plaintiff is always required to prove affirmatively.” Jackson, 209 P.2d at 568. Although “the question of proximate causation is generally reserved for the jury,” Clark, 893 P.2d at 601 (internal quotation marks omitted), “the trial court may rule as a matter of law on this issue ... if ... ‘there is no evidence to establish a causal connection, thus leaving causation to jury speculation,’ ” *id.* (quoting Steffensen v. Smith's Mgmt. Corp., 820 P.2d 482, 487 (Utah Ct.App.1991)).

This court has had recent opportunity to rule on when expert medical testimony is required to establish a prima facie case of negligence. The cases are Beard v. K-Mart Corp., 2000 UT App 285, 12 P.3d 1015, and Fox v. Brigham Young University, 2007 UT App 406, 176 P.3d 446. The Beard decision cites two cases from other jurisdictions, Jordan v. Smoot, 191 Ga.App. 74, 380 S.E.2d 714, 715 (1989); and Walton v. Gallbraith, 15 Mich.App. 490, 166 N.W.2d 605, 606 (1969), in which causation was established without the benefit of expert testimony..

In Beard this Court stated, “[t]he need for positive expert testimony to establish a causal link between the defendants' negligent act and the plaintiff's injury depends on the nature of the injury.” *Id.* at ¶ 16 (internal quotation marks omitted). Thus, “[w]here the injury involves obscure medical factors which are beyond an ordinary lay person's knowledge, necessitating speculation in making a finding, there must be expert testimony that the negligent act probably caused the injury.” *Id.* (citations and internal quotation

marks omitted). In such cases, the “testimony of lay witnesses regarding the need for specific medical treatment is inadequate to submit the issue to the jury.” Id.

In examining Beard it should be noted that the evidentiary problem for the Plaintiff in Beard was that as a result of being struck in the head by a K-Mart employee’s elbow, the Plaintiff required multiple neurological surgeries. The opinion in Beard specifically applies to “this medical causation issue”, i.e. neurological surgeries resulting from an elbow strike to the head. Mr. Hall is not seeking damages for neurological surgeries. The injuries claimed by Mr. Hall are commonly referred to as soft tissue injuries.

In reaching the Beard decision this court reviewed two cases proffered by Beard, Jordan v. Smoot, 191 Ga.App. 74, 380 S.E.2d 714, 715 (1989); and Walton v. Gallbraith, 15 Mich.App. 490, 166 N.W.2d 605, 606 (1969), in which causation was established without the benefit of expert testimony. Smoot involved injuries sustained as the result of an automobile accident. The treatment consisted of chiropractic care. Quoting the Georgia Court of Appeals:

Appellant's case consisted of her testimony and that of the responding police officer, pictures of her damaged car, and her medical bill. Through her testimony, appellant established that she was involved in a collision with appellee; that later that same day she experienced pain and visited a chiropractor; that she continued to have pain from the back of her head through her neck and shoulders; that the chiropractic treatments gave her relief; that she stopped seeing the chiropractor four months after the collision; and that she had suffered from some backaches prior to the collision but had not been under medical care. Pursuant to OCGA § 24-7-9, appellant identified the medical bills for her chiropractic treatment from March 12 through July 20, 1987, totaling \$2,245. Appellant then rested...

Id. at 714.

In finding that the plaintiff had met the burden of proof with respect to causation the court held:

However, where, as here, there is no significant lapse of time between the injury sustained and the onset of the physical condition for which the injured party seeks compensation, and the *injury sustained is a matter which jurors must be credited with knowing by reason of common knowledge*, expert medical testimony is not required in order for a plaintiff to establish a personal injury case sufficient to withstand a defendant's motion for directed verdict.

Id. at 714-715, (emphasis added by the Utah Court of Appeals in Beard).

The facts in Walton, 15 Mich.App. 490, 166 N.W.2d 605, are similar. the plaintiff sued the defendant for neck, back, and shoulder injuries caused by a car accident. At trial, no physician testified for the plaintiff, and the defendant “objected to the admission into evidence of bills for medicine and treatment on the ground that there was no showing that they were causally connected with the ... accident.” The defendant also requested an instruction to exclude the jury's consideration of the bills. The trial court denied both motions, and the jury awarded the plaintiff \$3500 in damages. On appeal, the defendant argued it was error to introduce plaintiff's medical bills. The plaintiff, on the other hand, argued “that a causal connection between the accident and the injury may be shown without expert testimony.” Id. at 605-06. The Walton court stated:

A brief review of the function of the jury leads us to the conclusion that plaintiff's position is the correct one. Her testimony emphasizes the facts



that there were no previous neck or back pains and that they began the day after the accident.

*In a situation such as this, it should be clear to men of common experience that the cause of the injuries was the accident and no expert was needed to demonstrate this fact.*

Therefore, the court sustained the jury's verdict in favor of the plaintiff. Id. at 606.

In comparing Smoot and Walton to Beard this Court stated: “we conclude these cases are factually distinguishable as they involve medical damages within the common experience of a layperson.” Beard at 1018. Thus according to this Court’s decision in Beard, cases involving injuries to the neck, back and shoulder resulting from car accidents involve medical damages within the common experience of a layperson.

Fox v. BYU was decided by this Court after Beard. The plaintiff in Fox suffered knee injuries during a slip and fall. Prior to the slip and fall, the plaintiff had been diagnosed with osteoarthritis.

At the scene of Mrs. Fox's fall, she first attributed the cause of her fall to the fact that her knee “gave out.” She admitted to the EMTs that she had been diagnosed with a pre-existing condition, osteoarthritis, in that same knee. Thus, by her own initial explanation of the cause of her fall and her admission of an osteoarthritic condition, Mrs. Fox tied the cause of her fall to medical factors sufficiently complicated to be beyond the ordinary senses and common experience of a layperson. Mrs. Fox's lay testimony would not have been sufficient to determine whether the need for her medical treatment, the surgery and attachment of the fixator, was caused by BYU's allegedly defective stairs or the failure of her own arthritic knee.

The only evidence the plaintiff intended to call at trial to establish causation was her own testimony. This Court determined that, “[t]he trial court did not err in dismissing

the Foxes' negligence claim for failure to present expert testimony on the element of causation because the factors associated with Mrs. Fox's fall and injury were sufficiently medically complex to require such testimony.”

The facts in this case compare favorably to the facts in Smoot and Walton. In this case, Mr. Hall suffered neck and back injuries following an automobile accident. Like the Plaintiff in Smoot, Mr. Hall experienced neck and back pain prior to the December 11, 2000 automobile accident. However, the pain he experienced following the accident was of a different kind and was more severe. In Walton, the only evidence necessary to establish causation was that of the Plaintiff. In this case, Plaintiff has designated his treating chiropractor, Dr. Anderson, as a fact witness. Dr. Anderson treated Mr. Hall on October 4, 2000. Dr. Anderson's testimony will establish a baseline of what Mr. Hall's condition was prior to the accident at issue. Dr. Anderson treated Mr. Hall following the accident on the same day as the accident. Dr. Anderson's testimony concerning the observable changes to Mr. Hall's condition versus his condition prior to the accident on December 11, 2000 is sufficient to establish a prima facie case of negligence.

#### **Genuine issues of material fact**

There is a dispute in this case as to when Mr. Hall began experiencing pain following the December 11, 2000 accident. There is also a dispute as to the location, type and severity of the pain experienced by Mr. Hall following the accident. As noted in Brigham Young University v. Tremco Consultants, Inc., 110 P.3d 678 (Utah, 2005), summary judgment is appropriate when there are no genuine issues of material fact and

“the moving party is entitled to a judgment as a matter of law.” Utah R. Civ. P. 56:

In addition, “[the court] view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.”

BYU v. Tremco, quoting Prince v. Bear River Mut. Ins. Co., 2002 UT 68, ¶ 14, 56 P.3d 524.

As to the specific issue of causation:

The question of proximate causation “is generally reserved for the jury.” Steffensen, 820 P.2d at 486 (citing Godesky v. Provo City Corp., 690 P.2d 541, 544 (Utah 1984)). Consequently, the trial court may rule as a matter of law on this issue only if: “(1) there is no evidence to establish a causal connection, thus leaving causation to jury speculation, or (2) where reasonable persons could not differ on the inferences to be derived from the evidence on proximate causation.” Steffensen, 820 P.2d at 487 (citing Robertson v. Sixpence Inns of Am., Inc., 163 Ariz. 539, 546, 789 P.2d 1040, 1047 (1990) (en banc)).

Clark v. Farmers Ins. Exchange, 893 P.2d 598, 601, (Utah App. 1995).

In Clark, quoted above, the plaintiff had no memory of how he was injured. The experts who testified could not testify as to which driver among many had hit the plaintiff’s vehicle and thus there truly was no evidence of causation.

In this case the Defendant argued at the trial level that Mr. Hall did not begin experiencing pain until a couple days after the accident. (See Defendant’s Motion for Summary Judgment, Fact 6, attached hereto as addendum Nine). Defendant argument that Mr. Hall could not establish causation was based upon the fact that there was a gap of a couple days between the accident and when Mr. Hall began seeking treatment.

However, the facts in this case as established through discovery show that Mr. Hall

sought treatment for his injuries on the day of the accident. (See Accident Report, attached hereto as Addendum Eight. See also Dec 11, 2000 notes of Dr. Anderson, attached hereto as Addendum Five).

The facts of this case taken in the light most favorable to Mr. Hall show that within hours of this accident Mr. Hall began experiencing severe pain of a different kind in a different location of his neck. The facts also show that he was treated by his chiropractor for severe pain of a different kind in a different location of his neck. These facts are sufficient to establish a *prima facie* case of causation.

As such, Defendant has not satisfied either of the conditions set forth in Clark which would justify taking from the jury the role of fact finder. This is so because (1) there is evidence to establish a causal connection, thus a potential jury needn't be left to speculation, and (2) reasonable persons could differ on the inferences to be derived from the evidence on proximate causation.

For the above reasons, it was improper for the trial court to rule as a matter of law that Plaintiff could not establish causation. Having established a *prima facie* case of causation, the issue of causation should have been presented to the jury.

### **CONCLUSION**

In reality, this case is hardly distinguishable from the Smoot and Walton cases discussed above. In this case Mr. Hall was injured when the vehicle being driven by the defendant struck a freeway retaining wall while traveling 40 plus miles per hour. Mr. Hall

felt the severe effects of this accident later that same day. He sought treatment from a chiropractor, with whom he had previously treated, that same day. Because he had previously treated with the chiropractor, the chiropractor can testify as to Mr. Hall's condition before and after the accident. The injuries suffered by Mr. Hall were neck and back injuries, the very kind of injuries that this Court has previously stated are within the common experience of a layperson.

In contrast, the Beard and Fox decisions upon which the trial court issued its ruling involved complex neurological surgeries and osteoarthritis. To equate the soft tissue injuries suffered by Mr. Hall with the conditions presented respectfully in Beard and Fox is a serious blow to all chiropractic patients and is disservice to the intelligence of jurors in Utah.

The plaintiff in this case can establish a *prima facie* case of causation through the testimony of the plaintiff who will testify as to the circumstances of the accident and the fact that he began experiencing severe pain of a different kind in a different location in his neck and back on the day of the accident and through the testimony of his treating chiropractor who will testify as to his condition prior to this accident and as to his condition following this accident.

Because the plaintiff, Mr. Hall, can establish a *prima facie* case of causation, Petitioner asks that this Court reverse the trial court's grant of summary judgment and remand this case to Fourth District Court so that Mr. Hall can try his case before a jury.

DATED AND SIGNED this 12<sup>th</sup> day of December, 2008.

A handwritten signature in black ink, appearing to read "Rex I. Eagar", written over a horizontal line.

REX I EAGAR  
IVIE & YOUNG  
Attorneys for Petitioner

Defendant's Address:  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111

REX I. EAGAR, #9559  
R. PHIL IVIE, #3657  
IVIE & YOUNG  
Attorneys for Defendant  
226 West 2230 North, Suite 210  
P.O. Box 657  
Provo, Utah 84604  
375-3000

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IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

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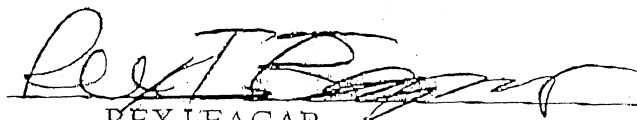
JONATHAN HALL,	:	CERTIFICATE OF SERVICE
Plaintiff/Appellant,	:	
vs.	:	
JASON STEIMLE,	:	ORAL ARGUMENTS REQUESTED
Defendant/Appellee.	:	

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COMES NOW Rex I. Eagar, attorney for plaintiff, Jonathan Hall, and hereby certifies that on the 12<sup>th</sup> day of December, 2008, a true and correct copy of plaintiff's Brief of Appellant was served by first-class mail, with postage prepaid thereon, to:

Gary T. Wright, #10994  
KIPP & CHRISTIAN  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111

DATED AND SIGNED this 12<sup>th</sup> day of December, 2008.

  
REX I EAGAR  
IVIE & YOUNG  
Attorneys for Petitioner

# ADDENDUM 1



NAN T. BASSETT - #8909  
GARY T. WIGHT - #10994  
KIPP AND CHRISTIAN, P.C.  
Attorneys for Defendant  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Telephone: (801) 521-3773

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

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JONATHON HALL,

Plaintiff,

JASON STEIMLE

Defendant.

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**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Case No. 040403916

Judge James R. Taylor

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Defendant's Motion for Summary Judgment was heard by this Court on March 25, 2008. Defendant Jason Steimle was represented by Gary T. Wight. Plaintiff Jonathon Hall was represented by Rex L. Fagar.

Based upon the parties' memoranda and oral argument upon Defendant's Motion, this Court holds that Plaintiff's claims against Defendant should be dismissed with prejudice.

Specifically, this Court's findings of fact and conclusions of law are as follows:

1 Plaintiff Jonathon Hall asserts negligence claims against Defendant Jason Steimle arising from a motor vehicle accident that occurred on December 11, 2000.

2 In the summer of 1998 or 1999, Plaintiff suffered a whiplash injury when he dove into a shallow lake.

3 Plaintiff received chiropractic treatment for the whiplash injury.

4 On October 4, 2000—just over two months before the December 2000 motor vehicle accident—Plaintiff presented to Anderson Chiropractic, complaining of neck and back pain.

5 In his Complaint, Plaintiff alleges that he suffered permanent neck and back injuries as a result of the December 2000 motor vehicle accident.

6 According to the Amended Stipulated Scheduling Order filed with this Court, Plaintiff's expert reports were due on June 1, 2007.

7 Plaintiff never filed an expert report in accordance with Rule 26 of the Utah Rules of Civil Procedure.

8 Under Utah law, where the injury in question involves obscure medical factors which are beyond an ordinary lay person's knowledge, there must be expert testimony that the negligent act probably caused the injury.

9 In light of Plaintiff's injuries and treatment prior to the December 2000 motor vehicle accident, Plaintiff was required to designate an expert on causation.

10. Because Plaintiff designated no expert on causation, he cannot provide evidence that the December 2000 motor vehicle accident caused the injuries described in his Complaint.

Accordingly, this Court ORDERS, ADJUDGES, AND DECREES:

1. Defendant's Motion for Summary Judgment is granted; and
2. Plaintiff's claims against Defendant are dismissed with prejudice.
3. Each party shall bear its own attorney's fees and costs associated with this motion.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

BY THE COURT

---

JAMES R. TAYLOR  
District Court Judge

APPROVED AS TO FORM:


IVIE & YOUNG



JARED R. CASPER  
REX I. EAGAR  
Attorneys for Plaintiff

### CERTIFICATE OF MAILING

I hereby certify that I mailed on this 15th day of March, 2008, postage prepaid, a copy of the foregoing **Order Granting Defendant's Motion for Summary Judgment** to the following:

~~David N. Mortensen~~ 

R. Phil Ivie

Jared R. Casper

Rex I. Eagar

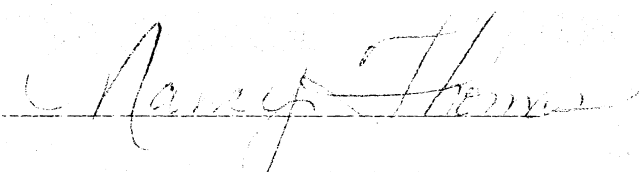
IVIE & YOUNG

Attorneys for Plaintiff

226 West 2230 North, Suite 210

P.O. Box 657

Provo, Utah 84603



# ADDENDUM 2

JARED R. CASPER #8160  
REX I. EAGAR #9559  
IVIE & YOUNG  
Attorneys for Plaintiff  
226 West 2230 North, Suite 110  
P.O. Box 657  
Provo, UT 84603  
Phone: (801) 375-3000  
Fax: (801) 375-3067

---

IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

---

JONATHON HALL,

Plaintiff,

vs.

JASON STEIMLE,

Defendant.

**NOTICE OF APPEAL**

Case No. 040403916

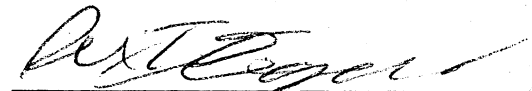
Judge James R. Taylor

---

Notice is hereby given that plaintiff and appellant, Jonathon Hall, by and through his attorneys of record, Rex I Eagar and the law firm of Ivie & Young appeals to the Utah Supreme Court the order granting defendant's motion for summary judgment of the Honorable James R. Taylor entered in this matter on April 25, 2008.

The appeal is taken from the entire judgment.

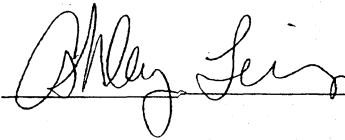
DATED AND SIGNED this 27 day of May, 2008.



REX I EAGAR  
IVIE & YOUNG  
Attorneys for the Appellant

I certify that a true and correct copy of Plaintiff's Notice of Appeal was mailed, postage prepaid, to the following, on the 27<sup>th</sup> day of May, 2008.

Gary T. Wight  
KIPP AND CHRISTIAN, P.C.  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111



---

# ADDENDUM 3



CERTIFIED COPY

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

\* \* \*

JONATHAN HALL,

Plaintiff,

vs.

JASON STEIMLE,

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:

Deposition of:

JONATHAN HALL

Case No. 040403916

Judge James R. Taylor

\* \* \*

May 1, 2007

10:48 a.m.

Offices of Jared R. Casper  
IVIE & YOUNG  
226 West 2230 North, Suite 210  
Provo, Utah

\* \* \*

Jamie R. Brey  
- Registered Professional Reporter -



DEPOMAX

LITIGATION SERVICES

2133 SOUTH RIO GRANDE  
SALT LAKE CITY, UTAH 84101  
WWW.DEPOMAXLIT.COM

TOLL FREE 800-337-6623  
PHONE 801-328-1180  
FAX 801-328-1180

1 BY MR. WIGHT:

2 Q. And you have labelled the police car, vehicle  
3 No. 3?

4 A. Yes.

5 Q. To understand your diagram, as the Nissan  
6 Altima traveled southbound, you passed by a truck?

7 A. We didn't pass the truck at all.

8 Q. Why don't you explain to me what happened.

9 A. It was at about this point right here, and we  
10 started slowing down.

11 MR. CASPER: When you say "this point right  
12 here," that doesn't mean anything when she's typing it. So  
13 you need to describe it in relation to the picture, please.

14 THE WITNESS: I'm not sure how far away we  
15 were. But it was before we got to the overpass, quite a  
16 distance before we saw the police car up ahead. And we saw a  
17 car off the road. We started slowing. We slowed to probably  
18 about 40, 45 miles an hour. Jason did.

19 BY MR. WIGHT:

20 Q. And then what happened as you approached?

21 A. As we approached, we started sliding on black  
22 ice.

23 Q. Why don't you draw on the diagram approximately  
24 where the black ice was that you slid on.

25 A. It was probably right around this point, right

1 around the beginning of -- well, probably a good 20 or 30  
2 yards, at least, before the off-ramp.

3 Q. What I'd like you to do is just do your best  
4 estimate of where the black ice was. You can draw that on  
5 the diagram and just label that "black ice."

6 So you're traveling 40 to 45 miles an hour, you  
7 begin sliding on black ice. And then what happens?

8 A. We're actually heading directly for that truck.  
9 We get very close to the truck.

10 Q. Vehicle No. 2?

11 A. Right. So we end up -- he's able to maneuver  
12 away so that we don't hit that truck. And then we end up  
13 going over this way.

14 Q. When you say "this way," you mean west?

15 A. To the right. We go off the off-ramp, so we  
16 avoid the truck. And we continue to the right side close to  
17 the retaining wall of the off-ramp. We hit the retaining  
18 wall of the off-ramp. The damage to his car was done on the  
19 front fender and the right driver's side door.

20 Q. Can you draw on your diagram where the vehicle  
21 hit the -- what did you call it that you hit?

22 A. The retaining wall?

23 Q. Yeah, where you hit the retaining wall.

24 A. The front portion of the car, that got hit by  
25 the retaining wall. And we slid along the retaining wall for

1 awhile until we came to a stop. A tow truck had to come and  
2 pick up the car. It did the same kind of damage to his front  
3 wheel that -- as I explained in my fender-bender in Southern  
4 California. It did that kind of damage to his front wheel.  
5 So we weren't able to actually drive away.

6 Q. You've drawn a vehicle toward the top of the  
7 page. What's this vehicle?

8 A. This vehicle was a vehicle that had already  
9 slid on that black ice. It apparently had already come to a  
10 halt at the retaining wall sideways. So this car was  
11 completely sideways facing away from the freeway.

12 Q. Facing west?

13 A. Correct.

14 Q. Can you label that vehicle, vehicle No. 4?

15 A. I can do that.

16 Q. And that vehicle was already parked or stopped  
17 by the time you approached --

18 A. Correct.

19 Q. -- with Jason? You mentioned earlier that,  
20 when you hit black ice, you were going 40 to 45 miles per  
21 hour?

22 A. I believe so, yes.

23 Q. What's the best estimate of the speed you were  
24 going at the time you hit the retaining wall as you described  
25 it?

1           A.     I don't recall.

2           Q.     Would it have been less than 40 miles an hour?

3           A.     Definitely.

4           Q.     Would you estimate that it was less than 30

5 miles an hour?

6           A.     I'm not sure.

7           Q.     I'd also like you to label this vehicle as

8 vehicle No. 1 again. But -- and then write "after."

9           A.     Vehicle 1 again?

10          Q.     After impact.

11                 What were the weather conditions at the time of

12 the accident?

13          A.     Weather conditions? No precipitation, it

14 seemed like. We had been traveling south from Rexburg,

15 Idaho, and the weather had actually been quite nice. And the

16 weather seemed okay as we were traveling through Salt Lake

17 and traveling southbound to where we -- I don't even recall

18 where we were heading. I believe he was driving me back to

19 Provo. And -- yeah, the weather seemed fine.

20          Q.     Had you experienced any snow or --

21          A.     We hadn't.

22          Q.     -- ice prior to that time?

23          A.     No. The weather had been great.

24          Q.     If you recall, was it sunny or cloudy at the

25 time of the accident?

1     airbags?

2             A.     Yes, it is.

3             Q.     After the impact with the retaining wall, what  
4     was the -- was the Altima drivable?

5             A.     It was not.

6             Q.     Was the Altima towed away?

7             A.     Yes, it was.

8             Q.     Between after you hit the black ice and before  
9     you hit the retaining wall, do you recall saying anything to  
10    Jason while you were in the vehicle?

11            A.     No, I don't recall anything that was said.

12            Q.     Do you recall him saying anything?

13            A.     I don't.

14            Q.     Let's talk about the point of impact where you  
15    hit that retaining wall. What happened to you physically  
16    when you hit the retaining -- when the vehicle hit the  
17    retaining wall?

18            A.     Physically, my head went to the side.

19            Q.     When you say "the side," to the right or to the  
20    left?

21            A.     I don't recall which one. I know that the --  
22    more of the injury was on the left-hand side of my vertebrae.

23            Q.     Do you recall if your head hit anything, for  
24    example, an inside window or the --

25            A.     It didn't hit a window. It didn't hit

1 anything.

2 Q. Were you wearing your seatbelt at the time of  
3 the impact?

4 A. Yes. Both of us were wearing our seatbelts.

5 Q. What did you do right after the point of  
6 impact?

7 A. After the point of the impact, I do know that  
8 we had gotten out of the car.

9 Q. So you were able to get -- both of you were  
10 able to get out of the vehicle?

11 A. Yes, we were able to get out of the vehicle.  
12 And I don't recall much after that. I do remember a little  
13 bit when the police arrived. I don't remember if they had  
14 simply seen us or if we had called, I don't recall. I  
15 believe they had just seen us. I believe probably this  
16 police officer had seen us over here and probably called it  
17 in and had another police car come out and assist us over  
18 here.

19 Q. Do you recall how long it took for the police  
20 to arrive?

21 A. I don't.

22 Q. If you could estimate, 15 minutes? Thirty  
23 minutes? An hour?

24 A. It wasn't long. It wasn't long. They arrived  
25 fairly quickly. And, in fact, I'm wondering if maybe the

1 11:45 was probably the time that they took down the police  
2 report. So it could be that maybe we hit maybe about ten, 15  
3 minute before that. Approximately.

4 Q. Did any ambulance or other emergency services  
5 arrive -- or come to the scene besides the police?

6 A. I don't recall.

7 Q. Did you go to the hospital after the accident?

8 A. No.

9 Q. Where did you go and how did you get there?

10 A. We did get a ride. The tow truck -- the guy  
11 who towed the car away, drove off the off-ramp and took us to  
12 a gas station where we were picked up. I don't recall who it  
13 was that picked us up and I don't even recall where I stayed  
14 that night either. I believe I stayed at Jason's place,  
15 which he was living in the basement of his ex-girlfriend's  
16 house.

17 Q. Interesting.

18 A. Yeah.

19 Q. Do you recall any conversations with Jason  
20 after the accident?

21 A. I don't recall.

22 Q. Do you recall being upset with him after --

23 A. No. I know he wasn't happy about his car.

24 Q. That's to be understood.

25 A. I know at the time I didn't know that my neck



1 was as injured until a couple of days later.

2 Q. We're going to get to those injuries. Before  
3 we do, if you had been driving the vehicle, do you think you  
4 would have been able to avoid the collision with the  
5 retaining wall?

6 A. I don't --

7 MR. CASPER: Object on the grounds of  
8 speculation.

9 MR. WIGHT: Go ahead and answer.

10 THE WITNESS: I don't know.

11 BY MR. WIGHT:

12 Q. Do you fault Jason for anything that he did as  
13 far as the way he was driving prior to hitting the retaining  
14 wall?

15 A. Or the black ice?

16 Q. Do you think he was going -- for example, do  
17 you think he was going too fast? Do you think he wasn't  
18 paying attention? Do you have any faults with the way he was  
19 driving the vehicle?

20 A. No.

21 Q. Now I'd like to move and talk to you about the  
22 injuries that you -- that you experienced after the motor  
23 vehicle accident. So what -- when did you first experience  
24 pain after the accident?

25 A. I know it was the day that -- I know it was a

1 couple days later, approximately. Or it may have been the  
2 very next day, I don't recall.

3 Q. So one to two days later?

4 A. Right. I know that in Dr. Anderson's reports  
5 or medical records, whenever my first visit to him after that  
6 accident would have been that day.

7 Q. So the first day you experienced pain, you went  
8 and saw Dr. Anderson?

9 A. Yes. I called him and said, "I need to come in  
10 right away." Because I woke up in a lot of pain. Couldn't  
11 move my head at all.

12 Q. Describe the pain that you experienced on that  
13 very first day that you felt it.

14 A. Well, I woke up in the morning and I couldn't  
15 move my head. I remember when I -- I simply called him and  
16 told him that I needed to come in and have that adjusted  
17 because it was in a lot of pain.

18 Q. When you say you couldn't move your head, was  
19 that due to pain?

20 A. I couldn't -- you know, I could move it  
21 sideways. It was just -- it was like it was stationary. It  
22 was even dangerous for me to be driving because it was  
23 simply, you know -- I couldn't, you know, move to turn my  
24 head over my shoulder. So I simply...

25 Q. That first day, if you tried to move your head,

1           A.     I don't know. We were out of town.

2           Q.     Is there differences -- you've testified that  
3 the pain you experienced in the diving accident and you also  
4 have obviously experienced pain after the December 2000  
5 automobile accident, is there differences in the kinds of  
6 pain you experienced between the two injuries?

7           A.     Yeah. Actually when -- when it was explained  
8 to me later, when I went to see Dr. Anderson about that, he  
9 said that the difference in the injury was the fact that it  
10 was a side whiplash instead of a front and back.

11          Q.     On the car accident?

12          A.     The front and back whiplashes, I guess, are  
13 easier to treat and they heal up much better. Sideways is a  
14 little trickier.

15          Q.     So the difference, as it was explained to you  
16 by Dr. Anderson, was that your injury was the result of your  
17 head going from --

18          A.     From side to side --

19          Q.     -- side to side versus --

20                   (Off-the-record discussion)

21 BY MR. CASPER:

22          Q.     So the difference that was explained to you  
23 between the two injuries by Dr. Anderson was that the auto  
24 accident was caused by your head going side to side versus  
25 the diving accident was caused by your neck going front to

1 back?

2 A. Correct.

3 Q. Was there a difference in the severity of the  
4 pain between the two injuries?

5 A. It was a lot more painful from the side to  
6 side.

7 Q. So it was a lot more painful from the  
8 automobile accident?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes. With the forward-to-back whiplash, I was  
12 still able to move my head. I -- it didn't affect my head to  
13 the degree that it did with the other one; I wasn't able to  
14 even move my head at all.

15 Q. At the time of the automobile accident, were  
16 you experiencing any pain in the -- in the months before the  
17 auto accident in your neck?

18 A. I don't recall. I know that I was seeing  
19 Dr. Anderson occasionally. I know he has record of how often  
20 I came in and what for.

21 Q. Was your treatment prior to the December 2000  
22 automobile accident with Dr. Anderson related to a specific  
23 injury? Or in lines with what you had done prior to -- you  
24 had done throughout your life in going to see a chiropractor  
25 for regular treatment?

1           A.     I had always gone to a chiropractor just --  
2 because that's the way I was brought up.

3           Q.     You didn't go see Dr. Anderson initially  
4 because of a specific neck injury?

5           A.     No.

6           Q.     And was there a noticeable difference to you in  
7 the way your neck felt in the months prior to the December  
8 2000 accident and the way it felt after the December 2000 --

9           A.     Oh, yeah.

10          Q.     -- accident?

11          A.     Uh-huh. A lot.

12          Q.     When you dove into the lake and hurt your neck  
13 when your chin hit the lake bottom, do you remember how --

14          A.     I have some chipped teeth to prove it.

15          Q.     Do you remember how old you were?

16          A.     At the time I believe it says there, '98 to  
17 '99. So that must be what Dr. Smith has on his records.

18          Q.     Let me back up.

19          A.     I'm 30 right now.

20          Q.     All right. Keep going.

21          A.     So I kind of have to count backwards.

22          Q.     Let me see if I can help you. You said earlier  
23 you went to Ricks College from 1998 to 2000?

24          A.     Correct.

25          Q.     Was the accident diving into the lake before

1 police report, too.

2 Q. Is it your understanding you were going 40 to  
3 45 miles per hour at the time you hit the black ice?

4 A. Probably.

5 Q. How fast was Jason going prior to slowing down?

6 A. Probably either around the speed limit or five  
7 over. Right around that.

8 Q. Well, what's your recollection of the speed  
9 limit on that stretch of road?

10 A. That stretch of road? I don't believe -- it  
11 was 65, probably. So yeah. So he was probably going around  
12 65 or 70.

13 Q. So is it accurate to say that, upon seeing the  
14 police car, Jason slowed down 20 to 25 miles per hour?

15 A. Uh-huh.

16 MR. CASPER: Is that a yes?

17 THE WITNESS: Yes.

18 MR. WIGHT: No further questions.

19 MR. CASPER: I don't have any further  
20 questions.

21 But I want him to have the opportunity to read  
22 and sign. Why don't you just send that to me, in light of  
23 him moving, and we'll get it to him.

24 (Deposition concluded at 12:35 p.m.)

25 \* \* \*

# ADDENDUM 4

GEORGE L. CHINGAS, JR., #8904  
R. PHIL IVIE, #3657  
IVIE & YOUNG  
Attorneys for Plaintiff  
226 West 2230 North, Suite 210  
P. O. Box 657  
Provo, Utah 84603  
375-3000

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

---

JONATHON HALL,	:	COMPLAINT
Plaintiff,	:	
vs.	:	
JASON STEIMLE,	:	Civil No.: 040403916
Defendant.	:	Div. 7

---

COMES NOW the plaintiff, Jonathon Hall, by and through his attorney, George L.

Chingas, Jr., and alleges as follows:

1. That defendant is a resident of Salt Lake City, Salt Lake County, State of Utah.
2. That plaintiff is a resident of Sandy, Salt Lake County, State of Utah.
3. That on or about the 11th day of December, 2000, Defendant Jason Steimle, at



approximately 3300 South I-15, Sandy, Salt Lake County, State of Utah, operated a vehicle in a negligent manner, specifically driving too fast for conditions and losing control of his vehicle of which Plaintiff was a passenger. The vehicle spun out of control when it hit a patch of ice on the road and collided with a barrier on the side of the road.

4. That at all times relevant herein, Defendant Jason Steimle failed to exercise proper control of his vehicle, was not maintaining a proper lookout, and was otherwise negligent.

5. That as a direct and proximate result of Defendant's negligence, Plaintiff suffered permanent injuries to his neck and back.

6. That as a direct and proximate result of the negligence of Defendant Jason Steimle, Plaintiff has incurred special damages, including medical expenses in an amount presently uncertain, but in excess of \$3,000.00, for which he shall be entitled to recover upon proof at trial.

7. That Plaintiff is entitled to interest on special damages as provided for by law.


8. As a further and direct and proximate result of Defendant's negligence, Plaintiff suffered general damages including pain and suffering, but for which he shall be entitled to recover upon proof at trial.

WHEREFORE, Plaintiff prays for relief against Defendant as follows:

1. For special damages to be determined upon proof at trial;
2. For interest on special damages as provided for by law;
3. For general damages to be determined upon proof at trial;
4. For costs and expenses incurred herein; and
5. For such other and further relief as the Court deems just and proper in the

premises.

DATED AND SIGNED this 9<sup>th</sup> day of December, 2004.

  
\_\_\_\_\_  
GEORGE L. CHINGAS, JR.  
IVIE & YOUNG  
Attorneys for Plaintiff

Plaintiff's Address:  
2694 East Cassowary Drive  
Sandy, Utah 84092

# ADDENDUM 5

Date

Visit No.

SUBSEQUENT VISITS AND FINDINGS

12-11-00

S - MP still edge, strong, pt. on way home that part  
would be stable all the way forward to me

A - Cerv. spine motion, & ligament at C5-C6 pt. on C5-C6, pt. on  
A - Cerv. spine motion, & ligament at C5-C6 pt. on C5-C6, pt. on  
P - pre-op surgery, still stable pt. on C5-C6, pt. on C5-C6, pt. on C5-C6

12-13-00

S - MP & spine, still neg. exam

A - & neck, no exam

P - Top back

P - Spine, Cervical to L2-L3, still neg. structure, all fine / 1/4

12-18-00

S - MP still stable, still neg. exam

A - is more painful still, still neg. exam

A - Cerv. spine motion, & ligament at C5-C6, pt. on C5-C6, pt. on C5-C6

P - still no, no, still neg. exam, still neg. exam, still neg. exam

12-20-00

S - MP

1-03-01

S - MP still stable, still neg. exam

A - is more painful still, still neg. exam

A - Cerv. spine motion, & ligament at C5-C6, pt. on C5-C6, pt. on C5-C6

P - still no, no, still neg. exam, still neg. exam, still neg. exam

1-16-01

S - MP still stable, still neg. exam

A - Spine

Still same

A - still same, still same, still same

2-6-01

one exam

S - Pt. MP, last

A -

P -

P -

P -

P -

P -

P -

P -

P -

P -

P -

P -

S.O.A.P. Note: S Subjective, O Objective Findings, A Patient Assessment, P Procedure/Plan. THESE NOTES ARE FOR THE DOCTOR'S INTERPRETATION ONLY. ANYONE ELSE'S INTERPRETATION MAY BE ERRONEOUS.

DOCTOR'S PROGRESS (S.O.A.P.) NOTES

Jonathan Hall

**S.O.A.P. NOTE**

Patient Name: JONATHAN HALL

Patient's #

for Anticipation

Therapist: Lisa Gava

Age: \_\_\_\_\_ R L W B H O F (M) MVA W/C DOA \_\_\_\_\_ OTHER \_\_\_\_\_



# VISITINO

## SUBSEQUENT VISITS AND FINDINGS

10-11-50

1

5/10/17 ① n/5 pms ② mid back pms ③ E. spine

HOPX)- CHRONIC HD OF A/S - and back pain, previous CHRONIC CARE HAS NEGATIVE SPECIMENS AT WORK IN LOW STILL IN LABORATORY. A very similar

0-100 exam, 1st TH PRSVD, 12 pm (11:15), 100% exam / 4 additional notes

6-12 CH CO myofibrils (1st para) significant @ 57-61%.

2. CH<sub>3</sub>COOH (10%) 3. CH<sub>3</sub>COONa (50%) or CH<sub>3</sub>COOH (10%)

p - correct optimal value was found by the Pt algorithm; sub class II, overall avg. known  
in the year

[illegible]

3. *Reynolds* *parvif.*, *Chlor. black* *parvif.*, *Anth. parvif.*

On 10/11/1978, the following information was received:

As in the case of myeloma, a V<sub>H</sub> 4-7-VH, and AL  $\lambda$  chain

for entering the circuit, *Physalis peruviana* L.

As a paleo-researcher, he has been able to identify the

*Continued next page*

1924

5

5-117, Anterior to posterior, & lateral, & medial

10-14-23

At 5:00 AM

for Sale, pt. purchased on credit from

22-5-1947

**3**



2

to the extent possible, the extent of the entire page, which

8- Lt. Ruffe skinned, composed of red & yellow

A - N - GIAN IN LOT ANKLE DEAN, CH. & E. MAN CHIN

for ~~contribution~~ if ~~nothing~~ is ~~for~~ ~~given~~ ~~to~~ ~~the~~ ~~State~~, ~~at~~ ~~least~~, ~~at~~ ~~least~~ ~~the~~ ~~State~~

There is

John B. Bragg, R.R. 1, No. 1

# ADDENDUM 6

DAVID N. MORTENSEN, #6617  
R. PHIL IVIE, #3657  
IVIE & YOUNG  
Attorneys for Plaintiff  
226 West 2230 North, Suite 110  
P.O. Box 657  
Provo, Utah 84603  
Telephone: (801) 375-3000  
Fax: (801) 375-3067

**IN THE FOURTH DISTRICT COURT IN AND FOR UTAH COUNTY**

**STATE OF UTAH**

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JONATHAN HALL,	:	PLAINTIFF'S ANSWERS TO
	:	DEFENDANT'S FIRST SET OF
Plaintiff,	:	INTERROGATORIES AND REQUEST
	:	FOR PRODUCTION OF DOCUMENTS
vs.	:	
JASON STEIMLE,	:	Civil No.: 040403916
	:	
Defendant.	:	Div 7

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These interrogatories have been answered according to commonly understood English meanings of the words used in plaintiffs' request. The interrogatories have also been answered in accordance with Utah Rules of Civil Procedure. The plaintiff has not read the pages of definitions in the instructions preceding defendant's interrogatories because plaintiff objects to any attempts by defendant to impose burdens upon the plaintiff not provided for by the Utah Rules of Civil Procedure, or to answer questions where terms are defined other than in generally accepted definitions of those terms as used in the English language.

INTERROGATORY NO. 9: In reference to Interrogatory No. 8, state whether any person, company, or institution, including any government agency, has a lien for any medical expenses paid on your behalf and the amount of any such lien.

ANSWER: No such liens exist.

INTERROGATORY NO. 10: If it is claimed that Plaintiff will be required to incur additional medical expenses in the future for any of the injuries or illnesses allegedly resulting from this occurrence, set forth the approximate amounts which it is claimed will be so incurred and the basis of your calculations, including the names and addresses of any persons upon whom you have relied in making such claim or calculation.

ANSWER: See letter from Devin McClean, D.C. attached hereto as Exhibit A.

INTERROGATORY NO. 11: As to any of the injuries, illnesses, complaints or symptoms previously described in Plaintiff's answers to these interrogatories, state whether Plaintiff has had any similar injury, illness, complaint or symptom prior to this occurrence, and if so, set forth the nature of each such similar illness or injury and the names and addresses of all persons or institutions examining or treating Plaintiff in connection with said injury?

ANSWER: Plaintiff had a whiplash injury in the summer of 1998/1999 when he dove into shallow lake. He was treated by Dr. Frank Smith, 8999 W. Central, Suite 101, Wichita, KS 67212, (312) 729-1633. He sustained a back injury and whiplash injury from hitting his chin on the lake bed. These injuries resolved quickly and he did not have any further trouble.



# ADDENDUM 7

DAVID N. MORTENSEN, #6617  
R. PHIL IVIE, #3657  
IVIE & YOUNG  
Attorneys for Plaintiff  
226 West 2230 North, Suite 120  
Provo, Utah 84603  
801-375-3000

**IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY**

**STATE OF UTAH**

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JONATHON HALL	:	PLAINTIFF'S RULE 26(a) INITIAL DISCLOSURES
Plaintiff,	:	
vs.	:	
JASON STEIMLE,	:	Civil No.: 040403916
Defendant.	:	Div. 7

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Pursuant to Rule 26(a) (1) of the Utah Rules of Civil Procedure, Plaintiff Jonathon Hall, hereby make the following initial disclosures:

**RULE 26 (a)(1)**

*Initial disclosures.* Except in cases exempt under Subdivision (a)(2) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

RULE 26(a)(1)(A)

The name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

RESPONSE:

1. Jonathon Hall, c/o David N. Mortensen, Ivie & Young, 226 West 2230 North, Provo, Utah 84603; It is anticipated that Mr. Hall will testify regarding the facts of the accident, the injuries sustained and his subsequent treatment.

2. Jason Steimle, c/o Paul H. Matthews, Paul H. Matthews & Associates, 10 West Broadway, Suite 700, Salt Lake City, Utah 84101-2060; It is anticipated that Mr. Steimle will testify regarding the facts of the accident.

3. Utah Highway Patrol, Trooper Tyler Kotter, Salt Lake Couty, 5681 South 320 West, Murray, Utah; It is anticipated that Trooper Kotter will testify consistent with his investigative report, dated December 11, 2000, Report No.: 0400415400.

4. Health care providers, including but not limited to:

Anderson Chiropractic Clinic  
132 West 900 North  
Spanish Fork, Utah 84660

Open Imaging - Redwood  
6243 South Redwood Road #130  
Taylorsville, Utah 84123

Strehlow Radiology Consulting  
3742 E. Tropicana Avenue, Suite 1

# ADDENDUM 8

1		DIS Rev. 10/93		STATE		JTAH INVESTIGATING OFFICER'S REPORT OF										FIC ACCIDENT		Page 1 of 2		15
TIME		MONTH DAY YEAR		DAY OF WEEK		1 2 3 4 5 6 7		M T W T F S S		MILITARY TIME		0024		CASE NUMBER		D40015400		17		
2		PLACE WHERE ACCIDENT OCCURRED: COUNTY		Salt Lake		35		CITY OR TOWN		South Salt Lake City		FOR AGENCY USE						16		
B		Accident was outside city limits		Indicate distance from city limits or nearest town		MILES		NORTH S E W		CITY OR TOWN		D.L.D. USE ONLY						6		
LOCATION		ROAD ON WHICH ACCIDENT OCCURRED: SR 15		RAMP NO.				GIVE NAME OF STREET OR HIGHWAY NUMBER		INTERSECTION TYPE								17		
1		AT ITS INTERSECTION WITH		NORTH S E W		300 FEET		3300 South structure										18		
2		2. IF NOT AT INTERSECTION		NORTH S E W		300 FEET		3300 South structure										19		
		TERMINAL OF A MILE		NORTH S E W		300 FEET		3300 South structure										20		
		NEAREST INTERSECTION, STREET, HOUSE NO., LANDMARK																21		
		BE SURE TO COMPLETE IF ROAD HAS MILE POST																22		
4		VEHICLE #		YEAR		MAKE		MODEL		BODY STYLE/TYPE CODE		VEHICLE COLOR		G.V.W.R.		DESC. OF CARGO		00		
1		1		1995		Nissan		ALTIMA		4D Sedan		2		Red				23		
		VEHICLE IDENTIFICATION NUMBER		DISPOSITION OF VEHICLE		CODE		1 Towed (held for owner)										24		
		1N4BU31085C251128																25		
5		US DOT		LICENSE PLATE INFO		YEAR		MONTH		STATE		NUMBER		PARTS DAMAGED		COST OF REPAIR		26		
5		JCC MC		2001		Sep		UT		755LHW		1,3				\$ 1,500		27		
6		OWNER		FIRST		INITIAL		LAST		STREET, CITY, STATE, ZIP, PHONE NO.		PHONE						28		
6		OPERATOR		JASON		A		STEIMLE		4909 S MURRAY BLVD #T4, MURRAY, UT 84123								29		
7		DRIVER		JASON		A		STEIMLE		4909 S MURRAY BLVD #T4, MURRAY, UT 84123								30		
8		DRIVER'S LICENSE		STATE		NUMBER		DATE OF BIRTH		MONTH DAY YEAR		AGE		SEX		SAFETY EQUIP		31		
8		UT		160337785				05/31/1978				22		M		2		32		
9		DRIVER'S EDUCATION		1. PUBLIC 3. NONE		2. COM 4. UNKN		LICENSE CLASS		ENDORSEMENT		RESTRICTIONS						33		
9		1		1		4		D										34		
10		INSURANCE COMPANY		EFFECTIVE DATE		EXPIRATION DATE		POLICY NUMBER										35		
10		ORION AUTO		09/15/2000		03/15/2001		4304451										36		
11		INSURANCE APPEARS VALID		AGENCY THAT SOLD POLICY		ADDRESS		PHONE										37		
11		YES		SMITH INS		(none)		801-478-4141										38		
12		VEHICLE #		YEAR		MAKE		MODEL		BODY STYLE/TYPE CODE		VEHICLE COLOR		G.V.W.R.		DESC. OF CARGO		39		
12		1																40		
13		VEHICLE IDENTIFICATION NUMBER		DISPOSITION OF VEHICLE		CODE												41		
13																		42		
14		US DOT		LICENSE PLATE INFO		YEAR		MONTH		STATE		NUMBER		PARTS DAMAGED		COST OF REPAIR		43		
14		JCC MC														\$		44		
15		OWNER		FIRST		INITIAL		LAST		STREET, CITY, STATE, ZIP, PHONE NO.		PHONE						45		
15		OPERATOR																46		
16		DRIVER																47		
16		DRIVER'S LICENSE		STATE		NUMBER		DATE OF BIRTH		MONTH DAY YEAR		AGE		SEX		SAFETY EQUIP		48		
16		1																49		
17		DRIVER'S EDUCATION		1. PUBLIC 3. NONE		2. COM 4. UNKN		LICENSE CLASS		ENDORSEMENT		RESTRICTIONS						50		
17		1		1														51		
18		INSURANCE COMPANY		EFFECTIVE DATE		EXPIRATION DATE		POLICY NUMBER										52		
18																		53		
19		INSURANCE APPEARS VALID		AGENCY THAT SOLD POLICY		ADDRESS		PHONE										54		
19		YES																55		
20		1. PEDESTRIAN		2. BICYCLIST		DATE OF BIRTH												56		
20		NAME		ADDRESS														57		
20		1		13		Hall, Jonathan		606 W 1720 N #333, Provo, UT 84604		24		M		2		1		58		
20																		59		
20																		60		
20																		61		
20																		62		
20																		63		
20																		64		
20																		65		
20																		66		
20																		67		
20																		68		
20																		69		
20																		70		

ORIGINAL REPORT

SUPPLEMENTAL REPORT

AMENDED REPORT

9

24

DIAGRAM WHAT HAPPENED BELOW.

**Reason For No Diagram**

☒ Officer not at scene

☐ Vehicles moved

☐ Other

**CASE NUMBER**

040015400

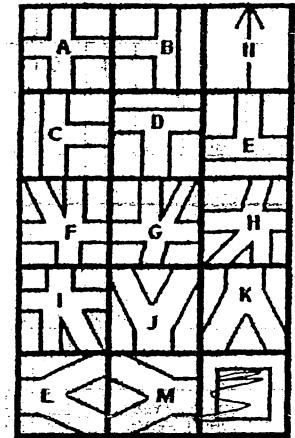
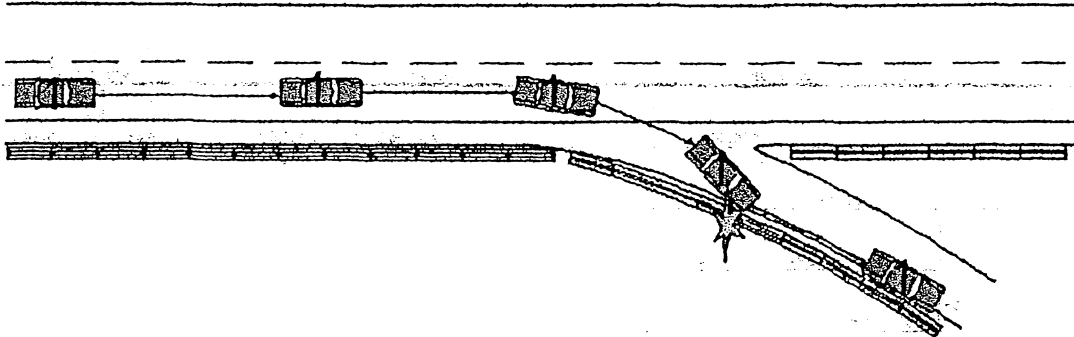
INDICATE DIRECTION  
OF NORTH



VEHICLE NO. 1 NO.

ESTIMATED TRAVEL SPEED	55
ESTIMATED IMPACT SPEED	45
POSTED SPEED	55
ADVISORY SPEED	35

**Southbound I-15 3300 South off ramp**



INDICATE INTERSECTION TYPE

DESCRIBE WHAT HAPPENED  
(Refer to Vehicle by Number)

Vehicle #1 was southbound I-15 in #2 lane at 3300 South when the driver became confused with the off ramp location and main flow.

The driver hit some ice and lost control of his vehicle and struck the outside concrete barrier at the top of the off ramp. The driver stated that he had been going around 55 mph with the icy conditions.

If Hazardous Materials were involved  
list the placard number from off the  
commercial vehicle:

DAMAGE TO PROPERTY  
OTHER THAN VEHICLES

Name object and state nature and amount of damage

ESTIMATE

Name and address of  
owner of object struck

**WITNESSES**

Name Address Phone  
Name Address Phone

**FIRST AID ADMINISTERED BY**

- 1 - Policeman
- 2 - Fireman
- 3 - Ambulance Personnel
- 4 - Paramedics
- 5 - Doctor
- 6 - Private Individual
- 7 - Hospital
- 8 - Helicopter Personnel
- 9 - None Administered
- 0 - Unknown

EMS REPORT NO.

**INJURED TAKEN BY**

- 1 - Ambulance, Private
- 2 - Ambulance, Fire
- 3 - Paramedics
- 4 - Private Vehicle
- 5 - Helicopter
- 6 - Other

TIME Amb. Called Arrived

INJURED TAKEN TO

**POLICE ACTIVITY**

12-10-2000

Date Notified of Accident

**Source of Information**

Officer at Scene Tyler Kotter  
Driver No. Contacted station  
Other

PHOTO(S) TAKEN  
YES ☐ NO ☒

VIDEO TAKEN  
YES ☐ NO ☒

FIELD DIAGRAM  
YES ☐ NO ☒

(USE  
MILITARY  
TIME)

0024

Time Notified of Accident

0031

Arrived at Scene

Investigation of Accident  
Completed at

0145

at X

the same day the day following

Name STEIMLE, JASON A.

Charge: Speed Too Fast Conditions

CVSA Inspection Yes No ☒ If Yes, Report Number

Other action taken

PRINT Ttp. Tyler Kotter 509 Section 4 UHP 12-11-2000  
OFFICER'S RANK AND NAME I.D. NO. PATROL DIVISION DEPARTMENT SUPERVISOR'S APPROVAL DATE OF REPORT

State Law requires that report be forwarded to Dept. of Public Safety within 10 days following completion of the investigation. Mail ORIGINAL OF REPORT TO:  
Driver License Division Financial Responsibility Section 4501 South 2700 West \* P.O. Box 30560 \* Salt Lake City, Utah 84130-0560

UP



# UTAH HIGHWAY PATROL ACCIDENT INFORMATION FORM



Accident Location SB I-15 3300 S off  
Date of Accident 12/11/00 Time of Accident 0035 am/pm

Case Number 040015400  
Travel Speed 55 mph

Direction of Travel  
North ( ) South (X)  
East ( ) West ( )

Lane of Travel  
Left ( ) Middle ( )  
Right (X) Other ( )

## VEHICLE INFORMATION

Vehicle Year 95 Make NISSAN  
Model ALTIMA Body Style GXE  
Color RED Est. Cost of Repair 2000  
Location of Damage FRONT & RIGHT SIDE  
Is Vehicle Drivable? NO Wrecker? YES  
Vin # (On Registration) 1N4BU31D85L251128  
License Plate # 755 LHW  
State Registered In UTAH  
Registration Expiration Date 10/00  
Vehicle Towed By \_\_\_\_\_

## OWNER INFORMATION

Registered Owner JASON ALLEN STEINLE  
Address 53 W. FRANKLIN CIR.  
City BOUNTIFUL State and Zip UT 84010  
Phone Number (801) 599 6975

## INSURANCE INFORMATION

Insurance Company ORION AUTO  
Policy Number 4304451  
Dates of Current Policy 9/15/00 to 03/15/01  
Insurance Agent JOHN HENRY SMITH  
Agent's Address 601 E. 2100 S.  
Agent's Phone Number (801) 487-4141

## DRIVER INFORMATION

Driver's Name JASON STEINLE Date of Birth 05/31/78  
Address 53 W. FRANKLIN CIR. City BOUNTIFUL State and zip UT 84010  
Phone Number (801) 599-6975 Driver License Number and State UT 160357785  
Driver License Class D Restrictions NONE Age 22 Sex M  
Type of Driver Education High School Years of Driving Experience 7  
Were You Injured? NO Part(s) of Body Injured \_\_\_\_\_  
Part of Vehicle Causing the Injury \_\_\_\_\_ Were You Wearing a Seatbelt? YES

## PASSENGER INFORMATION

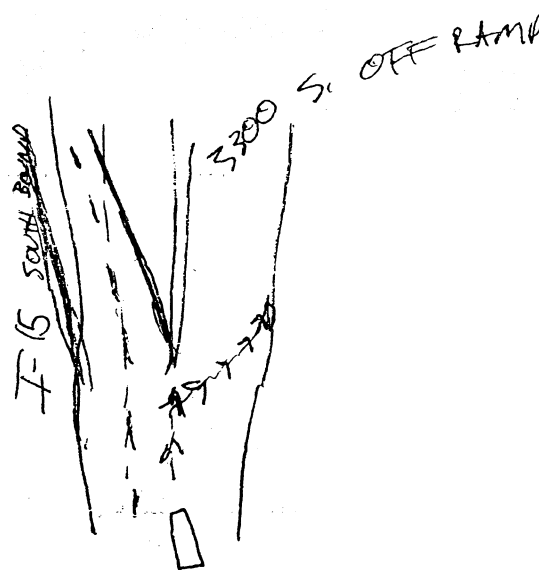
Name JONATHAN HALL Address 606 W. 1720 N. #333 PROVO, UT 84604  
Phone # (801) 860-2812 Age 24 Sex M Injury? NO Area of Injury \_\_\_\_\_  
Cause of Injury \_\_\_\_\_ Seating Position in Vehicle PASSENGER (FRONT)  
Seatbelt Use (Y/N): Y

Name \_\_\_\_\_ Address \_\_\_\_\_  
Phone # ( ) \_\_\_\_\_ Age \_\_\_\_\_ Sex \_\_\_\_\_ Injury? \_\_\_\_\_ Area of Injury \_\_\_\_\_  
Cause of Injury \_\_\_\_\_ Seating Position in Vehicle \_\_\_\_\_  
Seatbelt Use (Y/N): \_\_\_\_\_

PLEASE COMPLETE INFORMATION ON REVERSE SIDE

I WAS DRIVING SOUTH BOUND ON I-15 WITH THE 3300 S. OFF-RAMP COMING UP. MY SPEED WAS BETWEEN 50-55 MPH. AS THE OFF-RAMP CAME UP, I-15 ~~DOES~~ TURNS LEFT SUDDENLY & I COULDN'T TELL WHICH DIRECTION TO GO BECAUSE IT IS VERY POORLY MARKED. WHEN I REALIZED WHAT WAS HAPPENING, I TRIED TO TURN TO THE LEFT & HIT SOME BLACK ICE ~~AND WAS~~ WAS ALMOST THROWN HEAD ON INTO A CONCRETE WALL. TRYING TO MISS HITTING IT HEAD-ON I SWERVED TO THE RIGHT, HIT SOME MORE BLACK ICE & WAS THROWN INTO THE WALL ON THE RIGHT.

### DIAGRAM



The above statement is true and correct to the best of my knowledge.

Jason Allen Steinfeld  
Signature

12/11/00  
Date



# ADDENDUM 9

NAN T. BASSETT - #8909  
GARY T. WIGHT - #10994  
KIPP AND CHRISTIAN, P.C.  
Attorneys for Defendant  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Telephone: (801) 521-3773

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

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JONATHON HALL,

Plaintiff,

v.

JASON STEIMLE,

Defendant.

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**DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Case No. 040403916

Judge James R. Taylor

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Defendant Jason Steimle ("Mr. Steimle"), by and through counsel, moves for summary judgment pursuant to Utah R.Civ.P.56. The grounds for Mr. Steimle's Motion are set forth in the accompanying Memorandum In Support of Motion For Summary Judgment.

JK

5. At the point of impact, Plaintiff's head moved to the side. Plaintiff's head did not hit a window or any other objects inside of the vehicle. (Hall Deposition, pp. 28-29, lines 14-25, 1).

6. Plaintiff did not go to the hospital after the accident. According to his deposition testimony, he did not know he was injured until a couple of days later. (Hall Deposition, pp. 30-31, lines 7-8, 25, 1).

7. On December 11, 2000, Plaintiff presented to the Anderson Chiropractic Center with complaints of neck pain. (12/11/00 Anderson Chiropractic Notes, attached as Exhibit 2).

8. Plaintiff had already consulted with Dr. Anderson regarding his neck pain prior to the motor vehicle accident at issue in this case. On October 4, 2000, Plaintiff received his initial chiropractic assessment from Anderson Chiropractic Center, at which time he complained of neck and back pain, rating his neck pain at a 4 on a scale from 1 to 10. Plaintiff was assessed as having chronic cervical dorsal myofascial pain syndrome with C7/T1 subluxation, as well as thoracic and ankle dysfunction. (10/4/00 Anderson Chiropractic Records, attached as Exhibit 3).

9. Plaintiff suffered neck and back injuries prior to the accident at issue in this case. In fact, in discovery responses he stated: "Plaintiff had a whiplash injury in the summer of 1998/1999 when he dove into a shallow lake. He was treated by Dr. Frank Smith [in Wichita,