

1986

Le Ann Schultz v. Weldon Conger : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Le Ann Schultz v. Weldon Conger*, No. 860181.00 (Utah Supreme Court, 1986).
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860181

IN THE SUPREME COURT
FOR THE STATE OF UTAH

LE ANN SCHULTZ,	:	
	:	
Plaintiff and Appellant,	:	
	:	RESPONDENT'S BRIEF
	:	
-vs-	:	
	:	Supreme Court No. 860181
WELDON CONGER,	:	
	:	
Defendant and Respondent.	:	

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STATEMENT OF ISSUES PRESENTED ON APPEAL

Does the statutory duty of serving "process and notice" during the course and scope of employment of a sheriff constitute a "governmental function"?

Are the notice requirements of the Governmental Immunity Act mandatory where immunity has been waived for the negligent operation of a motor vehicle?

Are the previous decisions of this court upholding the constitutionality of the Governmental Immunity Act, Section 63-30-1, et seq., valid and controlling?

DETERMINATIVE STATUTORY PROVISIONS

Section 63-30-1, et seq., Utah Code Annotated 1953, as amended, is attached hereto as Addendum A.

STATEMENT OF THE CASE

Plaintiff, Le Ann Schultz, instituted this action in the District Court for personal injuries sustained in a vehicular accident with defendant Conger. At the time of the accident Conger was a deputy Salt Lake County Sheriff who was engaged in the scope and course of his employment and was serving "process and notice." The Third Judicial District Court, by and through Judge Leonard Russon, granted defendant Conger's motion to dismiss on the ground that plaintiff-Schultz had failed to file a notice of claim with Salt Lake County as required by Sections 63-30-11 and 14 of the Utah Governmental Immunity Act. Plaintiff-Schultz appeals. (The relevant provisions of the Governmental Immunity Act are attached as Addendum A). (The Order of the District Court is attached as Addendum B).

STATEMENT OF FACTS

The facts of this case demonstrate the following:

1. On March 9, 1984 respondent Weldon Conger was employed as a deputy sheriff with the Salt Lake County Sheriff's Office. (R-2, 9, 13).
2. While serving in the course and scope of his employment and driving a vehicle, owned by and registered to Salt Lake County, he was involved in a two car accident with the plaintiff, Le Ann Schultz. (R-2, 9, 13).
3. Approximately six weeks later Schultz's insurance carrier filed a proof of claim under Section 31-41-6, Utah Code Annotated, the automobile no-fault law then in effect, for

possible reimbursement of Personal Injury Protection benefits the carrier had paid to Schultz. (R-34).

4. No claim was ever filed by Schultz with the Salt Lake County Commission under the provisions of Sections 63-30-11 and 14 for injuries sustained by Schultz in the accident. (R-8, 67; Schultz Brief p. 5).

5. Over nineteen months after the cause of action arose Schultz filed suit for personal injuries arising out of the accident in the Third Judicial District Court. (R-2, 11).

6. The action filed by Schultz was dismissed on motion for failure to file a notice of claim with Salt Lake County as required by the notice provisions of the Governmental Immunity Act. (R-65-69).

SUMMARY OF ARGUMENT

Governmental immunity has been waived for the negligent operation of a motor vehicle driven by an employee in the course and scope of his employment.^{1/} Immunity having been waived, plaintiff-Schultz was therefore required to file a notice of claim under the provisions of Sections 63-30-11 and 14 of the Immunity Act, not because driving an automobile is a governmental function but because service of process and notice is.

Having failed to file the statutorily required notice of claim, the District Court properly dismissed plaintiff-Schultz's complaint. The notice of claim filed by plaintiff's

^{1/} Section 63-30-7, Utah Code Annotated.

insurance carrier for Personal Injury Protection under the no-fault statute did not constitute notice under the Immunity Act; the carrier's notice was for a different claim, and did not meet the statutorily required elements for a notice of claim.

Plaintiff's own failure to take any steps to ascertain that the Governmental Immunity Act applied in this case, especially when she knew a county-owned vehicle was involved, does not excuse plaintiff-Schultz from complying with the mandatory notice requirements of the Immunity Act.

The constitutionality of the Governmental Immunity Act has previously been upheld by the court against challenges on the grounds of protection and due process; the constitutionality of the Act should again be sustained.

ARGUMENT

POINT I

GOVERNMENTAL IMMUNITY HAS BEEN WAIVED FOR INJURY RESULTING FROM THE NEGLIGENT OPERATION OF A MOTOR VEHICLE.

Deputy Sheriff Conger makes no claim of immunity from suit under the Governmental Immunity Act for injuries allegedly caused by his negligent operation of a county-owned vehicle. The plaintiff-Schultz strenuously argues in her brief that driving a motor vehicle is not conduct which is uniquely governmental and, therefore, Deputy Conger should not be immune from suit. Conger does not disagree.

Deputy Conger is well aware, as Schultz apparently is not, that immunity from suit has been waived under the Governmental

Immunity Act for injury sustained from the negligent operation of a motor vehicle. Section 63-30-7 provides in relevant part:

"[I]mmunity from suit from all governmental entities is waived for injury resulting from the negligent operation of any employee of a motor vehicle or other equipment during the performance of his duties, within the scope of employment, or under color of authority...."

Schultz has not named Salt Lake County as a defendant, but has named Deputy Conger as a defendant in her claim for damages under Section 63-30-4(3) of the Act which provides in relevant part:

"(3) The remedy against a governmental entity or its employee for an injury caused by an act or omission which occurs during the performance of such employee's duties, within the scope of employment, or under color of authority is...exclusive of any other civil action or proceeding by reason of the same subject matter against the employee...unless the employee acted or failed to act through fraud or malice."

Schultz's argument that driving a vehicle is not a uniquely governmental activity ignores the statutory waiver of immunity in an attempt to cloud the fact that she failed to file a notice of claim as required by Sections 63-30-11 and 14 of the Immunity Act.

POINT II

THE SERVICE OF SUBPOENAS DURING THE SCOPE AND COURSE OF EMPLOYMENT BY A DEPUTY COUNTY SHERIFF CONSTITUTES A "GOVERNMENTAL FUNCTION."

In the lower court, Schultz never raised the issue of whether Deputy Conger's conduct of serving subpoenas was a governmental function for which he and the County were

otherwise immune from suit under the provisions of the Immunity Act. Rather, her sole argument was, and on appeal continues to be, that driving a vehicle is not an activity which is uniquely governmental.

Schultz has also failed to recognize or raise at any point in this case the broader and essential issue of whether the statutorily imposed duty to serve process and notice "is of such a unique nature that it can only be performed by a governmental agency or that it is essential to the core of governmental activity."^{2/}

Conger submits that the statutory duty to serve process and notice meets both elements of the governmental function test set forth in Standiford. The sheriff is required by statute to serve process and notice. These terms are defined in Section 17-22-1, U.C.A., as follows:

"'Process' as used in this chapter includes all writs, warrants, summonses and orders of the courts or justice or judicial officers. 'Notice' includes all papers and orders, except process, required to be served in any proceeding before any court, board, commission or officer, or when required by law to be served independently of such proceedings."

The general duties of the sheriff are provided in Section 17-22-2, which provides in relevant part:

"The sheriff shall:

^{2/} Standiford v. Salt Lake City Corp., 605 P.2d 1230, 1236-1237 (1980).

(9) Serve all process and notice in the manner prescribed by law...."

Rule 4 of the Utah Rules of Civil Procedure requires in part that:

"Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service." (Emphasis added).

Rule 4 also provides that failure to obey a subpoena makes a person subject to judicial contempt proceedings under this rule. It should be noted that in large part it is through subpoenas that the judicial branch of government is able to function in an orderly, efficient, and authoritative manner.

The duty of service of summons has been held to be obligatory and subject to the extraordinary writ of mandamus.^{3/} In Hamilton, the Oregon Court of Appeals interpreted that state's statutes, which are similar to Utah's, regarding the sheriff's duty to serve summons. In finding that the sheriff's duty to serve summonses was mandatory, regardless of the fact that private individuals over the years of 18 could also serve summons, the court held:

"We hold that the sheriff has a statutory duty to serve a summons in a civil action and the duty is enforceable by a writ of mandamus." Id. at 344.

^{3/} Hamilton v. Hamilton, 676 P.2d 341 (Or. App., 1984).

The court in Hamilton also found that even though private individuals could serve summons that all service of summons was governmental in nature and governed by statute. And while the courts had power to direct the sheriff to serve summons, orders and process, it had no such authority over private individuals.

That a private individual may also serve some process and notice does not alter the fact that these activities relate solely to judicial and quasi-judicial functions which are both uniquely governmental and essential to the core of governmental activity.

This court has held that it is axiomatic that a sheriff, in appointing deputy sheriffs, is acting in connection with his official duties. Snyder v. Cook, 688 P.2d 496, 498 (Ut. 1984). It should also be axiomatic that a sheriff performing his statutory duty of serving process and notice in connection with the judicial functions of state government is also an official duty for which he is immune.

The court's reasoning in Borthick where it expounded on the governmental function test announced in Standiford is germane in this case:

"Standiford's reference to activities that 'can only be performed by a governmental agency' does not preclude governmental immunity for supervisory functions in some respects similar to those that could be performed by a private association authorized by agreements such as self regulation by an industry." (Emphasis added). Id. at 631.

That a private individual may engage in conduct similar to that prescribed for sheriffs does not preclude the finding of a governmental function in the exercise of statutorily prescribed duties by a deputy sheriff.

Conger submits that he was engaged in the governmental function of service of process and notice in the course and scope of his employment as a deputy county sheriff at the time of the accident. Therefore, both he and the government would be totally immune from suit except for the waiver of immunity in Section 63-30-7, U.C.A. for negligent operation of a vehicle. However, plaintiff failed to file a notice of claim with the governmental entity as required by the Immunity Act, and Schultz's cause of action is now barred by the statute.

POINT III

THE FILING OF A NOTICE OF CLAIM WITH A GOVERNMENTAL BODY OF A POLITICAL SUBDIVISION IS A MANDATORY PREREQUISITE OF THE GOVERNMENTAL IMMUNITY ACT PRIOR TO FILING SUIT IN A DISTRICT COURT.

- A. PLAINTIFF'S FAILURE TO FILE THE MANDATORY NOTICE OF CLAIM WITHIN ONE YEAR OF THE TIME IN WHICH THE CAUSE OF ACTION AROSE WAS FATAL TO PLAINTIFF'S ACTION. THE TRIAL COURT'S DISMISSAL OF HER LAWSUIT SHOULD BE SUSTAINED.

This court on numerous occasions has consistently held that the filing of a claim with the governing body of a governmental entity under the Governmental Immunity Act is mandatory and that failure to do so prohibits the bringing of an action against the governmental entity or its employee.

In Richards v. Leavitt, 716 P.2d 276 (Ut. 1985), this court determined that the subject cause of action arose under a

waiver of immunity under the Governmental Immunity Act and held the following regarding the statutory notice requirement:

"As the claim made by the plaintiff must be considered under waiver from immunity statutes, her claim is brought under the provisions of the Governmental Immunity Act. As such, the notice of claim requirements contained in U.C.A., Section 63-30-13 are mandated and her failure to comply with that provision bars her claim against Woodland Hills." Id. at 279. (Emphasis added).

In accord is Roosendaal Construction & Mining Corp. v. Holman, 28 U.2d 396, 503 P.2d 446 (Ut. 1972), where this court affirmed the dismissal of a complaint against the State Tax Commission on the grounds that the complaint was fatally defective in that it failed to allege compliance with the notice requirements of the Governmental Immunity Act.

Section 63-30-11(2), Utah Code Annotated 1953, as amended, provides:

"Any person having a claim for injury against a governmental entity or against an employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority shall, before maintaining an action, file a written notice of claim with such entity."

Section 63-30-13, Utah Code Annotated 1953, as amended, also provides:

"A claim against a political subdivision or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of a political subdivision within one year after the claim arises...." (Emphasis added).

As in Roosendaal, the complaint filed by Schultz also fails to allege compliance with the notice requirements of the Immunity Act and, therefore, the District Court properly dismissed her action.

In Yates v. Vernal Family Health Center, 617 P.2d 352 (Ut. 1980), this court again upheld the notice requirement of the Immunity Act and held:

"We think the Immunity Act is dispositive in that Section 63-30-13 provides:

'A claim against a political subdivision is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the cause of action arises'. (Emphasis the court's).

The record reflects that no such notice was filed with the County Commission of Uintah County any time during the year following appellant's discovery of her injury, and hence the District Court was correct in dismissing the complaint as to Uintah County...with prejudice." (Emphasis added). Id. at 354.

Schultz, having neither pled nor actually filed a notice of claim with the governing body of the County as required by the Immunity Act, is barred in her attempt to bring an action against respondent Conger.

B. THE CLAIM FILED BY SCHULTZ'S INSURANCE CARRIER FOR PERSONAL INJURY PROTECTION BENEFITS IS NOT A VALID NOTICE OF CLAIM UNDER THE NOTICE REQUIREMENTS OF THE GOVERNMENTAL IMMUNITY ACT.

Schultz concedes that she did not file a notice of claim with Salt Lake County under either Section 63-30-11 or 14 of the Governmental Immunity Act (Brief, p. 5). Having admittedly

failed to comply with the notice requirements of the Act, she nevertheless argues that the notice filed by her insurance company for Personal Injury Protection benefits under Section 31-41-6, Utah Code Annotated was sufficient to meet the purposes of the Immunity Act. Her position is without merit.

The form letter constituting the claim filed by State Farm does not meet the content requirements for notices as set forth in Section 63-30-11(3) of the Act in that it was not signed; not presented or signed by Schultz, her attorney, or her agent; did not specify any damage amount; did not set forth a statement of facts substantiating the claim; set forth only a possible claim for reimbursement for PIP benefits; and made no claim for loss of earnings, special damages, pain and suffering, nor for permanent, partial disability. (R-34).

It is well established under Utah law that a prerequisite in pursuing a claim against a governmental entity is full compliance with the notice requirements of the Governmental Immunity Act. Scarborough v. Granite School District, 531 P.2d 480 (Ut. 1975); Madsen v. Borthick, 658 P.2d 627 (Ut. 1983).

In Scarborough, the plaintiff sued Granite School District to recover for injuries suffered by her son in a fall on a school playground. The trial court dismissed the complaint, finding that the action was barred due to plaintiff's failure to file a notice of claim as required by Section 63-30-13 of the Immunity Act. On appeal, plaintiff unsuccessfully argued that although there was no literal compliance with the statute in the usual form or sense, there was substantial compliance

and a sufficient "filing" of a claim to satisfy the requirements of the statute. In affirming the dismissal of plaintiff's action the Utah Supreme Court held:

"The school district is a political subdivision of the state. Therefore it would normally be immune from suit; and the right to sue is an exception created by statute. We have consistently held that where a cause of action is based upon a statute, full compliance with its requirements is a condition precedent to the right to maintain a suit. In order to so meet the requirements of the statute quoted above and fulfill its intended purpose, the 'filing' of a claim should include these essentials: that it be in writing; that it contain a brief statement of the facts and the nature of the claim asserted; that it be subscribed by the party required to give it and who intends to rely on it; that it be directed to and delivered to someone authorized to or responsible for receiving it; and that this be done within the prescribed time." Id. at 482. (Emphasis added).

Clearly the notice submitted by Schultz's insurance carrier for PIP benefits was for an entirely separate and distinct claim from plaintiff's subsequent claim as contained in her complaint.

The Utah No-Fault Act, Section 31-41-11 in effect at the time this action arose and under which the insurance carrier filed its notice, provides that (in this case) State Farm shall be reimbursed by Salt Lake County or if there is "an issue of liability for such reimbursement and the amount of same shall be decided by mandatory, binding arbitration between the insurers."

This court has made it clear that State Farm does not even have a subrogation right to PIP funds claimed by its insured.

Allstate Insurance Co. v. Ivie, 606 P.2d 1197 (Ut. 1980). The insurance carrier's only right to such funds is created by the above-referenced statute and must be sought from the tort-feasor or the tort-feasor's insurance carrier. The only way to enforce the right of reimbursement is through arbitration. The claim presented by State Farm therefore could not be and is not a notice on behalf of the plaintiff for her claims over and above the no-fault PIP funds requested by the insurance carrier.

The insurance carrier cannot be plaintiff's agent inasmuch as the insurance carrier has no authority to represent Schultz in the collection of her personal claim for damages over and above the PIP benefits. Her insurance carrier has no legal interest or obligation under its insurance contract to do so.

C. SCHULTZ'S FAILURE TO DISCOVER CONGER'S STATUS AS A DEPUTY COUNTY SHERIFF DOES NOT TOLL THE MANDATORY NOTICE REQUIREMENT OF THE IMMUNITY ACT.

Plaintiff's accident was investigated by both Sandy City and another Salt Lake County Deputy Sheriff. Both accident reports clearly indicate that the vehicle driven by Conger was owned by and registered to Salt Lake County. (R-43 through 46). Schultz's argument that she was unaware that Conger was acting in the course and scope of his employment because he was not in uniform and the county vehicle was unmarked is simply unpersuasive.

Schultz had one year in which to investigate and discover the facts needed to file a claim with the county. It took Schultz's insurance carrier only six weeks to review the

accident and file a notice with the Salt Lake County Commission for personal injury protection under the Utah no-fault law then in effect. (R-34). When Schultz did file her action over nineteen months later, she did aver in paragraph 3 of her complaint:

"Weldon Conger, struck her vehicle from the rear while operating a vehicle for Salt Lake County." (Emphasis added). R-2.

It is obvious that the information necessary for Schultz to ascertain that Salt Lake County and a Deputy Salt Lake County Sheriff were involved in this accident were readily available based upon Schultz's insurance company's prompt action and her own averments in her complaint. She simply failed to timely pursue her cause of action and failed to comply with the necessary filing requirements.

This court rejected a similar argument in another case involving the notice requirements of the Immunity Act. The court held:

"Southworth cannot now validly contend that he did not know, or should have known, of State's alleged negligence with respect to his affirmative claim against State when he was present at and involved in this accident. He could at the time of the accident, or within one year thereafter, have determined the absence of warning signs on the highway, which is the predicate of his claim on appeal. Sears v. Southworth, 563 P.2d 192, 194 (Ut. 1977)." (Emphasis added).

Schultz, in this case, also could, at the time of the accident or within one year thereafter, have determined both the ownership of the vehicle by Salt Lake County, and the

status of Conger as a Deputy Sheriff and complied with the notice requirements of the Immunity Act.

In Varoz v. Salt Lake County, 506 P.2d 435 (Ut. 1973), this court upheld the requirement of notice even where the claimant had been misinformed about the ownership of the road in question and had mistakenly filed a notice of claim with the state rather than the county. The court held that his notice to the county which was filed late was fatal to his case and upheld the dismissal of his action by the trial court.

The record is void of any reason other than plaintiff's own lack of knowledge and her own failure to take any action which would reveal the necessity of complying with the notice requirement. Such dilatory action and failure to proceed on the part of plaintiff is not sufficient grounds to toll the statute or void the compliance of the notice of claim requirements of the statute.

Plaintiff attempts to call into question whether Deputy Conger was actually engaged in the scope and course of his employment at the time of the accident. This point is raised for the first time on appeal and is not properly before the court. Yates, supra, at 354.

The record is absolutely uncontroverted by Schultz that Conger at the time of the accident was:

(a) employed as a Salt Lake County Deputy Sheriff;

(b) on duty performing the statutory duty of serving process and notice during the course and scope of his employment; and (R-2, 9, 13).

(c) driving a vehicle owned by and registered to Salt Lake County. (R-2, 9, 13, 43, 45).

The court is bound by the record on appeal on this issue and should not be misled by the mere speculations of plaintiff regarding the documented and unrefuted status of deputy Conger's on-duty activities.

POINT IV

THE GOVERNMENTAL IMMUNITY ACT IS CONSTITUTIONAL IN ALL REGARDS.

This court has previously upheld the constitutionality of the Governmental Immunity Act in Madsen v. Borthick, supra, by adopting the reasoning of the Kansas Supreme Court in the case of Brown v. Wichita State University, 547 P.2d 105 (Kan. 1976). In Brown the Kansas Supreme Court upheld the constitutionality of its state's Governmental Immunity Act against challenges that it violated the equal protection guarantees of the constitution and also violated rights of due process.

This court in Borthick held:

"Sovereign immunity--the principle that the state cannot be sued in its own courts without its consent--was a well settled principle of American common law at the time Utah became a state. (Citations omitted). Article I, Section 11 of the Utah Constitution, which prescribes that all courts shall be open and persons shall not be barred from using them to address injuries, was not meant to create a new remedy or a new right of action. (Citations omitted). Consequently, Article I, Section 11 makes no change in the principle of sovereign immunity, and sovereign immunity is not unconstitutional under that section. It was so held in Brown v. Wichita State University

(citations omitted), which involved a similar provision of the Kansas Constitution. We concur in the reasoning and result of that decision." Id. at 629.

This court has specifically upheld the constitutionality of the Governmental Immunity Act on the grounds of equal protection of the laws whereas in this case, the notice requirement had been challenged. Sears v. Southworth, 563 P.2d 192 (Ut. 1977). In Southworth, as in the present case, the plaintiff there argued that the notice of claim requirements of the Immunity Act violated the equal protection provisions of both the federal and state constitution. This court found a rational basis for the notice requirement and upheld the constitutionality of the statute.

Schultz contends that Buttrey v. Guaranteed Securities Co., 78 U. 39, 300 P. 1040 (Ut. 1931) validates her claim that the Immunity Act violates her rights to due process. As already discussed, in Borthick, the court has previously held that the enactment of the Governmental Immunity Act does not violate the constitutional provision that all courts are to be open and persons not barred from using them to address injuries.

In Buttrey, there had been a statutory change in the law which had precluded her right of action by the the time her case got to trial. However, in the present case there has been no change in the law which would preclude Schultz from maintaining her cause of action. The only harm suffered by Schultz is her failure to timely discover the facts surrounding her injuries and timely file her notice as required by the Governmental Immunity Act.

This statute has been before the court numerous times since the constitutionality of the statute was upheld in Sears nearly ten years ago. The statute has been applied, interpreted and its constitutionality again upheld. The court's analysis of another constitutional challenge to a state statute is most helpful:

"There are certain principles of law relating to the validity of statutes which have a bearing on the problem of constitutionality here presented. The first and foundational one is that the prerogative of the legislature as the creators of the law is to be respected. Consequently, its enactments are accorded a presumption of validity; and the courts do not strike down a legislative act unless the interests of justice in the particular case before it require doing so because the act is clearly in conflict with the higher law as set forth in the Constitution.

It is noteworthy that the statute under consideration has previously been involved in cases before this Court under differing circumstances and has not been declared unconstitutional. With respect thereto, we see no persuasive reason to disagree with [the] propositions supportive of the validity of the statute...." Zamora v. Draper, 635 P.2d 78, 80 (Ut. 1981).

The issues raised by Schultz regarding the constitutionality of the statute have previously been raised, heard, and decided in favor of the Act; the Governmental Immunity Act is constitutional in all regards.

CONCLUSION

Respondent-Conger respectfully submits that this court's previous decisions upholding the constitutionality of the Governmental Immunity Act are controlling in this case.

Further, compliance with the notice requirements of the Act are mandatory in this case because Conger was engaged in the governmental function of service of process and notice in the scope and course of his employment as a deputy county sheriff at the time plaintiff's cause of action arose.

Plaintiff-Schultz's failure to file a notice of claim under the provisions of the Act preclude the bringing of her action and the order of the District Court dismissing her cause for failure to file such notice should be sustained.

Respectfully submitted this _____ day of December, 1986.

DAVID E. YOCOM
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By _____
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Deputy County Attorney
Attorneys Respondent

CERTIFICATE OF SERVICE

I hereby certify that four copies of the Respondent's Brief were served upon John Spencer Snow, Attorney for Appellant, at 261 East 300 South, Salt Lake City, Utah, this _____ day of December, 1986.

1019G

- operation of motor vehicles - Exception.
- 63-30-8. Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.
- 63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement - Exception.
- 63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee - Exceptions - Waiver for injury caused by violation of fourth amendment rights.
- 63-30-11. Claim for injury - Notice - Contents - Service - Legal disability.
- 63-30-12. Claim against state or its employee - Time for filing notice.
- 63-30-13. Claim against political subdivision or its employee - Time for filing notice.
- 63-30-14. Claim for injury - Approval or denial by governmental entity or insurance carrier within ninety days.
- 63-30-15. Denial of claim for injury - Authority and time for filing action against governmental entity
- 63-30-16. Jurisdiction of district courts over actions - Application of Rules of Civil Procedure
- 63-30-17. Venue of actions.
- 63-30-18. Compromise and settlement of actions.
- 63-30-19. Undertaking required of plaintiff in action.
- 63-30-20. Judgment against governmental entity bars action against employee.
- 63-30-21. Repealed.
- 63-30-22. Exemplary or punitive damages prohibited - Governmental entity exempt from execution, attachment or garnishment.
- 63-30-23. Payment of claim or judgment against state - Presentment for payment.
- 63-30-24. Payment of claim or judgment against political subdivision - Procedure by governing body
- 63-30-25. Payment of claim or judgment against political subdivision - Installment payments.
- 63-30-26. Reserve funds for payment of claims or purchase of insurance created by political subdivisions.
- 63-30-27. Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums
- 63-30-28. Liability insurance - Purchase or self-insurance by governmental entity authorized - Establishment of trust accounts for self-insurance.
- 63-30-29. Repealed.
- 63-30-29.5. Liability insurance - Government vehicles operated by employees outside scope of employment.
- 63-30-30. Repealed.
- 63-30-31. Liability insurance - Construction of policy not in compliance with act.
- 63-30-32. Liability insurance - Methods for purchase or renewal.
- 63-30-33. Liability insurance - Insurance for employees authorized - No right to indemnification or contribution from governmental agency.
- 63-30-34. Limitation of judgments against governmental entity or employee - Insurance coverage exception.
- 63-30-35. Comprehensive liability plan - Providing coverage - Expenses of attorney general in representing state or employees.
- 63-30-36. Defending government employee - Request - Cooperation - Payment of judgment.
- 63-30-37. Recovery of judgment paid and defense costs by government employee.
- 63-30-38. Indemnification of governmental entity by employee not required.

63-30-1. Short title.

This act shall be known and may be cited as the "Utah Governmental Immunity Act." 1965

63-30-2. Definitions.

As used in this chapter:

(1) "State" means the state of Utah, and includes any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality of the state;

(2) "Political subdivision" means any county, city,

town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

(3) "Governmental entity" means the state and its political subdivisions as defined herein.

(4) "Employee" means any officer, employee, or servant of a governmental entity, whether or not compensated, including student teachers certificated in accordance with section 53-2-15, educational aides, students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program, volunteers and tutors.

(5) "Claim" means any claim or cause of action for money or damages against a governmental entity or against an employee.

(6) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent.

(7) "Personal injury" means an injury of any kind other than property damage.

(8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property 1983

63-30-3. Immunity of governmental entities from suit.

Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, governmentally-owned hospital, nursing home, or other governmental health care facility, and from an approved medical, nursing, or other professional health care clinical training program conducted in either public or private facilities.

The management of flood waters and other natural disasters and the construction, repair, and operation of flood and storm systems by governmental entities are considered to be governmental functions, and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities 1985

63-30-4. Act provisions not construed as

admission or denial of liability - Effect of waiver of immunity - Exclusive remedy - Joinder of employee - Limitations on personal liability.

(1) Nothing contained in this chapter, unless specifically provided, shall be construed as an admission or denial of liability or responsibility in so far as governmental entities or their employees are concerned. If immunity from suit is waived by this chapter, consent to be sued is granted and liability of the entity shall be determined as if the entity were a private person.

(2) Nothing in this chapter shall be construed as adversely affecting any immunity from suit which a governmental entity or employee may otherwise assert under state or federal law

(3) The remedy against a governmental entity or its employee for an injury caused by an act or omission which occurs during the performance of such employee's duties, within the scope of employment, or under color of authority is, after the effective date of this act, exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless the employee acted or failed to act through fraud or malice.

(4) An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee may be held personally liable for acts or omissions occurring during the performance of the employee's duties, within the scope of employment or under color of authority, unless it is established that the employee acted or failed to act due to fraud or malice. 1983

63-30-5. Waiver of immunity as to contractual obligations.

Immunity from suit of all governmental entities is waived as to any contractual obligation. Actions arising out of contractual rights or obligations shall not be subject to the requirements of Sections 63-30-11, 63-30-12, 63-30-13, 63-30-14, 63-30-15, or 63-30-19. 1985

63-30-6. Waiver of immunity as to actions involving property.

Immunity from suit of all governmental entities is waived for the recovery of any property real or personal or for the possession thereof or to quiet title thereto, or to foreclose mortgages or other liens thereon or to determine any adverse claim thereon, or secure any adjudication touching any mortgage or other lien said entity may have or claim on the property involved. 1965

63-30-7. Waiver of immunity for injury from negligent operation of motor vehicles - Exception.

Immunity from suit of all governmental entities is waived for injury resulting from the negligent operation by any employee of a motor vehicle or other equipment during the performance of his duties, within the scope of employment, or under color of authority; provided, however, that this section shall not apply to the operation of emergency vehicles as defined by law and while being driven in accordance with the requirements of section 41-6-14. 1983

63-30-8. Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.

Immunity from suit of all governmental entities is waived for any injury caused by a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct or other structure located thereon. 1965

63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement - Exception.

Immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement. Immunity is not waived for latent defective conditions. 1965

63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee - Exceptions - Waiver for injury caused by violation of fourth amendment rights.

(1) Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury:

(a) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused; or

(b) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of

mental anguish, or civil rights; or

(c) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization; or

(d) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property; or

(e) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause; or

(f) arises out of a misrepresentation by the employee whether or not it is negligent or intentional; or

(g) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances; or

(h) arises out of or in connection with the collection of and assessment of taxes; or

(i) arises out of the activities of the Utah National Guard; or

(j) arises out of the incarceration of any person in any state prison, county, or city jail or other place of legal confinement; or

(k) arises from any natural condition on state lands or the result of any activity authorized by the State Land Board; or

(l) arises out of the activities of providing emergency medical assistance, fighting fire, handling hazardous materials, or emergency evacuations.

(2) Immunity from suit of all governmental entities is waived for injury proximately caused or arising out of a violation of protected fourth amendment rights as provided in Chapter 16, Title 78 which shall be the exclusive remedy for injuries to those protected rights. If Section 78-16-3 or Subsection 77-35-12(g) or any parts thereof are held invalid or unconstitutional, this Subsection (2) shall be void and governmental entities shall remain immune from suit for violations of fourth amendment rights. 1985

63-30-11. Claim for injury - Notice - Contents - Service - Legal disability.

(1) A claim is deemed to arise when the statute of limitations that would apply if the claim were against a private person commences to run.

(2) Any person having a claim for injury against a governmental entity or against an employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority shall, before maintaining an action, file a written notice of claim with such entity.

(3) The notice of claim shall set forth a brief statement of the facts, the nature of the claim asserted, and the damages incurred by the claimant so far as they are known, shall be signed by the person making the claim or such person's agent, attorney, parent or legal guardian, and shall be directed and delivered to the responsible governmental entity in the manner and within the time prescribed in section 63-30-12 or 63-30-13, as applicable.

(4) If, at the time the claim arises, the claimant is under the age of majority, or mentally incompetent and without a legal guardian, or imprisoned, upon application by the claimant and after hearing and notice to the governmental entity the court, in its discretion, may extend the time for service of notice of claim; but in no event shall it grant an extension which exceeds the applicable statute of limitations. In determining whether to grant an extension, the

court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits. 1983

63-30-12. Claim against state or its employee - Time for filing notice.

A claim against the state or its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general and the agency concerned within one year after the claim arises, or before the expiration of any extension of time granted under subsection 63-30-11(4). 1983

63-30-13. Claim against political subdivision or its employee - Time for filing notice.

A claim against a political subdivision or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the claim arises, or before the expiration of any extension of time granted under subsection 63-30-11(4). 1983

63-30-14. Claim for injury - Approval or denial by governmental entity or insurance carrier within ninety days.

Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim. 1965

63-30-15. Denial of claim for injury - Authority and time for filing action against governmental entity.

If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an employee of the entity. The action must be commenced within one year after denial or the denial period as specified in this chapter. 1985

63-30-16. Jurisdiction of district courts over actions - Application of Rules of Civil Procedure.

The district courts shall have exclusive original jurisdiction over any action brought under this chapter, and such actions shall be governed by the Utah Rules of Civil Procedure in so far as they are consistent with this chapter. 1983

63-30-17. Venue of actions.

Actions against the state may be brought in the county in which the claim arose or in Salt Lake County. Actions against a county may be brought in the county in which the claim arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county. Leave may be granted ex parte. Actions against all other political subdivisions including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose. 1983

63-30-18. Compromise and settlement of actions.

A political subdivision, after conferring with its legal officer or other legal counsel if it has no such officer, may compromise and settle any action as to the damages or other relief sought.

The risk manager in the department of administrative services may compromise and settle any claim

for damages filed against the state up to and including \$10,000 for which the risk management fund may be liable, and may, with the concurrence of the attorney general or his representative and the executive director of the department of administrative services, compromise and settle a claim for damages in excess of \$10,000 for which the risk management fund may be liable. 1983

63-30-19. Undertaking required of plaintiff in action.

At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the court, but in no case less than the sum of \$300, conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment. 1965

63-30-20. Judgment against governmental entity bars action against employee.

Judgment against a governmental entity in an action brought under this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim. 1965

63-30-21. Repealed. 1978

63-30-22. Exemplary or punitive damages prohibited - Governmental entity exempt from execution, attachment or garnishment.

No judgment shall be rendered against the governmental entity for exemplary or punitive damages; nor shall execution, attachment or garnishment issue against the governmental entity. 1965

63-30-23. Payment of claim or judgment against state - Presentment for payment.

Any claim approved by the state as defined by subsection 63-30-2(5) or any final judgment obtained against the state shall be presented to the state risk manager, or to the office, agency, institution or other instrumentality involved for payment, if payment by said instrumentality is otherwise permitted by law. If such payment is not authorized by law then said judgment or claim shall be presented to the board of examiners and the board shall proceed as provided in section 63-6-10. 1983

63-30-24. Payment of claim or judgment against political subdivision - Procedure by governing body.

Any claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body thereof to be paid forthwith from the general funds of said political subdivision unless said funds are appropriated to some other use or restricted by law or contract for other purposes. 1965

63-30-25. Payment of claim or judgment against political subdivision - Installment payments.

If the subdivision is unable to pay the claim or award during the current fiscal year it may pay the claim or award in not more than ten ensuing annual installments of equal size or in such other installments as are agreeable to the claimant. 1965

63-30-26. Reserve funds for payment of claims or purchase of insurance created by political subdivisions.

Any political subdivision may create and maintain a reserve fund or may jointly with one or more other political subdivisions make contributions to a joint reserve fund, for the purpose of making payment of claims against the co-operating subdivisions when they become payable pursuant to this

chapter, or for the purpose of purchasing liability insurance to protect the co-operating subdivisions from any or all risks created by this chapter. 1983

63-30-27. Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.

Notwithstanding any provision of law to the contrary, all political subdivisions shall have authority to levy an annual property tax sufficient to pay any claims, settlements, or judgments, or to pay the costs to defend against same, or for the purpose of establishing and maintaining a reserve fund for the payment of such claims, settlements, or judgments as may be reasonably anticipated; and there is hereby specifically included any judgment against an elected official or employee of any political subdivision, including peace officers based upon a claim for punitive damages, provided, that the authority of a political subdivision for the payment of such judgments for punitive damages is limited in any individual case to \$10,000. It is hereby declared to be the legislative intent that the payments authorized for punitive damage judgments is money spent for a public purpose within the meaning of this section and Article XIII, Sec. 5, Utah Constitution; or to pay the premium for such insurance as authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded; provided, that in no event shall such levy exceed .0001 nor shall the revenues derived therefrom be used for any other purpose than those stipulated herein. 1985

63-30-28. Liability insurance - Purchase or self-insurance by governmental entity authorized - Establishment of trust accounts for self-insurance.

Any governmental entity within the state may purchase commercial insurance, self-insure, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against any risk created or recognized by this chapter or any action for which a governmental entity or its employee may be held liable.

In addition to any other reasonable means of self-insurance, a governmental entity may self-insure with respect to specified classes of claims by establishing a trust account under the management of an independent private trustee having authority with respect to claims of that character to expend both principal and earnings of the trust account solely to pay the costs of investigation, discovery, and other pretrial and litigation expenses including attorneys' fees, and to pay all sums for which the governmental entity may be adjudged liable or for which a compromise settlement may be agreed upon. The monies and interest earned on said trust fund shall be subject to investment pursuant to Chapter 7, Title 51, the State Money Management Act of 1974, and shall be subject to audit by the state auditor. Notwithstanding any law to the contrary, the trust agreement between the governmental entity and the trustee may authorize the trustee to employ counsel to defend actions against the entity and its employees and to protect and safeguard the assets of the trust, to provide for claims investigation and adjustment services, to employ expert witnesses and consultants, and to provide such other services and functions necessary and proper to carry out the purposes of the trust. 1985

63-30-29. Repealed.

1983

63-30-29.5. Liability insurance - Government vehicles operated by employees outside scope of employment.

A governmental entity that owns vehicles driven by employees of the governmental entity with the express or implied consent of the entity, but which, at the time liability is incurred as a result of an automobile accident, is not being driven and used within the course and scope of the driver's employment is considered to provide the driver with the insurance coverage required by Chapter 12A, Title 41. However, the liability coverages considered provided are the minimum limits under Section 31A-22-304. 1985

63-30-30. Repealed.

1978

63-30-31. Liability insurance - Construction of policy not in compliance with act.

Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this chapter, which contains any condition or provision not in compliance with the requirements of the chapter, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this chapter, provided the policy is otherwise valid. 1983

63-30-32. Liability insurance - Methods for purchase or renewal.

No contract or policy of insurance may be purchased or renewed under this chapter except upon public bid to be let to the lowest and best bidder; except that the purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of sections 63-56-1 through 63-56-73. 1983

63-30-33. Liability insurance - Insurance for employees authorized - No right to indemnification or contribution from governmental agency.

A governmental entity may insure any or all of its employees against liability, in whole or in part, for injury or damage resulting from an act or omission occurring during the performance of an employee's duties, within the scope of employment, or under color of authority, regardless of whether or not said entity is immune from suit for said act or omission, and any expenditure for such insurance is for a public purpose. The insurer under any contract or policy of insurance pursuant to this section shall have no right to indemnification or contribution from the governmental entity or its employee with respect to any loss or liability covered by the contract or policy. 1983

63-30-34. Limitation of judgments against governmental entity or employee - Insurance coverage exception.

(1) Subject to the provisions of subsection (3), if a judgment for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$250,000 for one person in any one occurrence, or \$500,000 for two or more persons in any one occurrence, the court shall reduce the judgment to that amount.

(2) Subject to the provisions of subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$100,000 in any one occurrence, the court shall reduce the judgment to that amount.

(3) If a governmental entity has secured insurance coverage in excess of the amounts set forth in subsections (1) and (2), the court shall reduce the amount of the judgment or award to a sum equal to the applicable limits of the insurance coverage. 1983

63-30-35. Comprehensive liability plan -

Providing coverage - Expenses of attorney general in representing state or employees.

(1) After consultation with appropriate state agencies, the risk manager in the department of administrative services shall provide a comprehensive liability plan, with limits not lower than those set forth in section 63-30-34, which will protect the state and its indemnified employees from claims and liability. Deductibles and maximum limits of coverage shall be determined by the risk manager in consultation with the director of administrative services.

(2) The risk manager may expend funds from the risk management fund established in section 63-1-47, to procure and provide coverage to all state agencies and their indemnified employees, except those specifically exempted by law, and shall apportion the cost of such coverage in accordance with section 63-1-47. Unless specifically authorized by statute to do so, including subsection 63-1-47(9), no agency other than the risk manager may procure or provide liability insurance for the state.

(3) Notwithstanding the provisions of section 67-5-3 or any other provision of this code, the state attorney general may bill the department of administrative services for all costs and legal fees expended by the attorney general, including attorneys' and secretarial salaries, in representing the state or any indemnified employee against any claim for which the risk management fund may be liable and in advising state agencies and employees regarding such claims. The risk manager shall draw funds from the risk management fund for this purpose. 1983

63-30-36. Defending government employee -

Request - Cooperation - Payment of judgment.

(1) Before a governmental entity may defend its employee against a claim, the employee must make a written request to the governmental entity to defend him and must make it within ten days after service of process upon him or within such longer period as would not prejudice the governmental entity in maintaining a defense on his behalf, or conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved. If the employee fails to make a request or fails to reasonably cooperate in the defense, the governmental entity is not required to defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.

(2) If a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon or any compromise or settlement of the claim except as provided in subsection (3).

(3) A governmental entity may conduct the defense of an employee under an agreement with the employee that the government entity reserves the right not to pay the judgment, compromise, or settlement unless it is established that the claim arose out of an act or omission occurring during the performance of his duties, within the scope of his employment, or under color of authority. 1983

63-30-37. Recovery of judgment paid and defense costs by government employee.

(1) Subject to subsection (2), if an employee pays a judgment entered against him, or any portion of it, which the governmental entity is required to pay under section 63-30-36, the employee is entitled to recover the amount of such payment and the reasonable costs incurred in his defense from the governmental entity.

(2) If a governmental entity does not conduct the defense of an employee against a claim, or does conduct the defense under an agreement as provided in subsection 63-30-36(3), the employee may recover from the governmental entity under subsection (1) if:

(a) The employee establishes that the act or omission upon which the judgment is based occurred during the performance of his duties, within the scope of his employment, or under color of authority, and that he conducted the defense in good faith; and

(b) The governmental entity does not establish that the injury or damage resulted from the fraud or malice of the employee. 1983

63-30-38. Indemnification of governmental entity by employee not required.

If a governmental entity pays all or part of a judgment based on or a compromise or settlement of a claim against the governmental entity or an employee, the employee may not be required to indemnify the governmental entity for the payment. 1983

Chapter 30a. Reimbursement of Legal Fees and Costs to Officers and Employees

63-30a-1. Definitions.

63-30a-2. Indictment or information against officer or employee - Reimbursement of attorneys' fees and court costs incurred in defense.

63-30a-3. Request for defense or reimbursement.

63-30a-1. Definitions.

As used in this act:

(1) "Officer or employee" means any individual who at the time of an event giving rise to a claim under this act is or was elected or appointed to or employed by a public entity, whether or not compensated, but does not include an independent contractor.

(2) "Public entity" means the state or any political subdivision of it or any office, department, division, board, agency, commission, council, authority, institution, hospital, school, college, university, or other instrumentality of the state or any such political subdivision. 1977

63-30a-2. Indictment or information against officer or employee - Reimbursement of attorneys' fees and court costs incurred in defense.

If a state grand jury indicts or if an information is filed against an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, unless the indictment or information is quashed or dismissed upon application or motion of the prosecuting attorney, that officer or employee shall be entitled to recover from the public entity reasonable attorneys' fees and court costs necessarily incurred in the defense of that indictment or information. 1983

FILED

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MAR 17 1986

L. E. Midgley

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LE ANN R. SCHULTZ,)	
Plaintiff,)	ORDER OF DISMISSAL
vs.)	
WELDON CONGER,)	Civil No. C-85-7163
Defendant.)	Leonard H. Russon, Judge

Defendants' Motion to Dismiss having come on regularly for hearing on the 24th day of February, 1986, before the undersigned, and L. E. Midgley, Esq., appearing in behalf of defendants and John Spencer Snow, Esq., appearing in behalf of the plaintiff, and arguments of counsel having been heard and the memoranda submitted by the parties having heretofor been reviewed by the Court, and the Court having found that the defendant Conger at the time of the accident in question which occurred on March 9, 1984, was employed as a deputy sheriff without uniform for the Salt Lake County Sheriff's Office and was driving an unmarked vehicle registered to Salt Lake County;

that the plaintiff failed to file a Notice of Claim as provided under the provisions of 63-30-11(2)(3) U.C.A. within the time prescribed by said statute; that the notice filed by the plaintiff's insurance company was insufficient; and that the Complaint filed herein was filed after the statute of limitations had expired under the provisions of the Governmental Immunity Act; and the Court having found that the defendants' Motion to Dismiss should be granted.

NOW, THEREFORE, it is ordered, adjudged and decreed that plaintiff's Complaint be and the same is herewith dismissed with prejudice..

DATED this 17th day of March, 1986.

BY THE COURT:

Leonard H. Russon
LEONARD H. RUSSON, District Judge

ATTEST
H. DIXON HINDLEY
Clerk

APPROVED AS TO FORM:

John Spencer Snow
JOHN SPENCER SNOW
Attorney for Plaintiffs

By L. L. Lundberg
Deputy Clerk