

1986

# Larry Raithaus v. Saab-Scania of America, Inc. : Reply Brief

Utah Supreme Court

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**SUPREME COURT  
BRIEF**

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DOCKET NO

IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

860208

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LARRY RAITHAUS, M.D.,	)	
	)	
Plaintiff,	)	Case No. 860208
	)	
v.	)	Priority No. 13b
	)	
SAAB-SCANIA OF AMERICA, INC.,	)	
a Connecticut corporation;	)	
SAAB-SCANIA AB, a Swedish	)	
corporation; and KEN GARFF	)	
FOREIGN CARS, a Utah corporation,	)	
	)	
Defendants.	)	

---

REPLY BRIEF OF CROSS-APPELLANTS  
SAAB-SCANIA OF AMERICA, INC. AND SAAB-SCANIA AB

---

APPEAL AND CROSS-APPEAL FROM A JUDGMENT AND ORDER  
OF THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
HONORABLE JOHN A. ROKICH  
HONORABLE JUDITH M. BILLINGS  
Date of Final Judgment 3/20/86  
Case No. C 82-9672

---

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SEP 29 1986

IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

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### SUMMARY OF ARGUMENT

Regardless what the legislature entitled the act, Utah Code Ann. § 78-15-3 (1953) is a statute of repose. The legislature enacted this measure to address the problem of increasing costs of liability insurance caused, in part, by the insurance industry's concern about liability for product-related injuries which might occur long after the date of manufacture or sale of a product. The legislature did not intend to replace existing statutes of limitation which operated to bar actions by persons who, although aware of their injuries, nevertheless slept on their rights. Indeed, to interpret the statute of repose as a measure allowing the plaintiff here to delay filing his claim would be directly contrary to the legislature's purpose "to expedite early evaluation and settlement of claims." (Utah Code Ann. § 78-15-2(3) (1953)).

Plaintiff erroneously bases his position on mechanical application of Utah Code Ann. § 78-12-1 (1953) and rigid reliance on inapplicable maxims of statutory construction. He has not cited a single case in which a court addressing the ultimate issue has supported his position.

### ARGUMENT

POINT I: THE TITLE OF THE ACT DOES NOT CONTROL  
THE MEANING OF THE STATUTE.

The plaintiff argues that Utah Code Ann. § 78-15-3 (1953) is a statute of limitation, because the title of the act contains

the phrase, "establishing a statute of limitations." However, this Court has previously recognized that the title of an act does not control the meaning of the statute where the language of the statute is unambiguous. (American Smelting & Refining Co. v. State Tax Commission, 16 Utah 2d 147, 150; 397 P.2d 67, 70 (1964)).

In Berry v. Beech Aircraft Corp., 717 P.2d 670 (Utah 1985), this Court concluded that Utah Code Ann. § 78-15-3 (1953) was a statute of repose because the time period commenced to run upon the occurrence of an event other than the date of injury giving rise to the cause of action and because the statute was not designed to allow a reasonable time within which to file an action once a cause of action accrued. Since the statutory language is unambiguous, the legislature's designation of the statute as a statute of limitation is not controlling.

POINT II: IN ENACTING THE STATUTE OF REPOSE,  
THE LEGISLATURE DID NOT INTEND TO  
PREEMPT STATUTES OF LIMITATION  
WHICH WOULD OTHERWISE BAR AN INJURED  
PARTY'S CLAIM.

A. The legislature enacted the statute of repose to address a perceived problem of rising insurance rates.

The Utah Legislature stated its purpose for enacting the Utah Products Liability Act in Utah Code Ann. § 78-15-2 (1953), expressing its concern about the rising number of suits and size of judgments rendered in product liability actions and perceiving



that these actions had an adverse impact on the cost and availability of liability insurance. One of the principal factors contributing to the rise in insurance rates was the continuing risk of liability for injuries caused by products long after the product's date of manufacture or sale. One commentator summarized the insurance industry's concern about this "tail exposure" as follows:

The threat of claims based on injuries caused by older products is cited as one of the most significant causes of the increased insurance rates. A products liability insurance policy typically covers all products claims made during the period that the policy is in force. While manufacturers and their insurers are subject to claims involving products manufactured during the present insurance period, they are also liable for injuries stemming from previously manufactured products. Therefore, well-established manufacturers of long-lasting products are exposed to a great degree of risk due to large numbers of previously manufactured products that are still in use. Many old products were produced during the time when the public was less safety-conscious than it is now and before manufacturers faced governmental pressures to produce safe products. Many manufacturers are facing claims based on products that were built prior to the advent of modern principles of strict tort liability. Although the number of claims actually predicated upon old products represents a very small portion of the total number of products liability claims, the potential for liability from these old products has created a considerable concern on the part of insurers that is reflected in higher premiums.

Note, Alabama's Products Liability Statute of Repose, 11 Cumberland L. Rev. 163, 166 (1980).

The Utah Legislature enacted the statute of repose, Utah Code Ann. § 78-15-3 (1953), to redress the problem of "tail exposure." The legislature intended to reduce uncertainty and risk by immunizing manufacturers and persons in their chains of distribution six years after sale or ten years after manufacture of their products.

- B. In contrast to statutes of repose, statutes of limitation focus on the behavior of the injured party once the cause of action arises.

As noted in the defendants' opening brief, the legislature enacts statutes of limitation to protect defendants from stale claims asserted after evidence is lost, memories have faded, and witnesses have disappeared. It has long been the policy of the law to encourage injured parties who are aware of their injuries to submit their claims for early resolution. The sole focus of a statute of limitation is upon the behavior of the injured party. If an injured person does not act timely, the person waives his or her remedy.

A commentator emphasized the difference in focus between statutes of repose and statutes of limitation as follows:

Historically, statutes of limitation prevented plaintiffs from sleeping on their legal rights to the detriment of defendants. The focus in the traditional statutes was upon the conduct of the plaintiff. If the plaintiff did not bring his cause of action in a timely manner, the statute of limitations deprived him of the opportunity to seek judicial redress for an otherwise valid claim. Statutes of repose, however, focus on the age of a product rather than on the plaintiff's conduct. They absolu-

tely bar all claims when products exceed the statutory age limitation and completely deprive a plaintiff of his rights merely because he has been injured by an older product.

Dickson, The Statute of Limitations in North Dakota's Products Liability Act: An Exercise in Futility?, 59 N.D. L. Rev. 552, 556-557 (1983).

Because the premises underlying the two types of statutes differ, the enactment of one type of statute does not automatically repeal previously enacted statutes of the other type. Certainly, that is the case here. Obviously, the legislature's desire to enact a measure to curb rising insurance rates did not supplant or eliminate the legislature's previously expressed policy that injured parties, well aware of their injuries, must bring their actions timely or waive their remedies.

C. Plaintiff's contention is contrary to the legislature's expressed intent.

In Utah Code Ann. § 78-15-2(3)(1953), the Utah Legislature stated its intent to enact measures "to expedite early evaluation and settlement of claims." [Emphasis added.] However, the plaintiff has taken the incongruous position that these legislative measures actually validate his delay in presenting his claim for evaluation and resolution. Plaintiff attempts to support this anomalous position by inviting the Court to mechanically apply Utah Code Ann. § 78-12-1 (1953) or indiscriminately employ maxims of statutory construction.

POINT III: UTAH CODE ANN. § 78-12-1 (1953) DOES NOT  
PRECLUDE OPERATION OF THE TWO YEAR  
LIMITATION ON THIS WRONGFUL DEATH ACTION.

A. Statutes must not be mechanically applied according to their  
literal terms without reasoned analysis.

Utah Code Ann. § 78-12-1 (1953) reads as follows:

Civil actions can be commenced only within the  
periods prescribed in this chapter, after the  
cause of action shall have accrued, except  
where in special cases a different limitation  
is prescribed by statute.

The plaintiff argues that the Utah Products Liability Act statute  
of repose is a special case prescribing a different limitation.  
Although the argument has superficial appeal, it does not  
withstand reasoned analysis.

In Snyder v. Clune, 15 Utah 2d 254, 390 P.2d 915 (1964),  
this Court noted that mechanical application of a statute in the  
absence of proper analysis may lead to anomalous results. In  
Snyder, the plaintiff sought damages from a non-resident motorist  
for personal injuries suffered in an automobile accident.  
Although the plaintiff filed her action after the four-year limi-  
tation period had run, she argued that the action was timely,  
because the literal terms of a tolling statute appeared to apply  
to actions against non-residents. After observing that the plain-  
tiff could have served process on the lieutenant governor as agent  
for the non-motorist under the non-resident motorist statute any  
time during the four year period, the Court commented:

It is to be conceded that upon a superficial look at the above section [Utah Code Ann. § 78-12-35 (1953)], ignoring all other considerations, its literal wording might seem to indicate that where a defendant departs from the state after a cause of action arises, the time of his absence should not be counted as part of the time of limitation. But statutes of necessity must state their objectives in general language. It is not always possible to foresee and prescribe in precise detail for all situations to which they might apply. Attempts to give them universal and literal application frequently lead to incongruous results which were never intended. When it is obvious that this is so, the statute should not be so applied.

15 Utah 2d at pp. 255; 390 P.2d at pp. 915-916. Just as the Court in Snyder refused to superficially examine and mechanically apply the tolling provision, so should the Court here refrain from applying the literal terms of Utah Code Ann. § 78-12-1 (1953) without proper analysis.

Utah Code Ann. § 78-12-1 (1953) particularly illustrates the principle that the legislature cannot always foresee in precise detail all situations to which the statute might apply. The legislature enacted the Utah Products Liability Act in 1977. This enactment responded to a movement promoting statutes of repose which started in the late 1950's and early 1960's. (McGovern, The Variety, Policy and Constitutionality of Product Liability Statutes of Repose, 30 Am. U.L. Rev. 579, 587 (1981)). By contrast, the language now appearing as Utah Code Ann. § 78-12-1 (1953) has been the law of Utah since 1876, having been previously

designated as Comp. Laws 1876 § 1095; 2 Comp. Laws 1888 § 3129; R.S. 1898 § 2855; Comp. Laws 1907 § 2855; Utah Code Ann. § 104-2-1 (1943); and Utah Code Ann. § 104-12-1 (1943 Supp.). Obviously, the legislature in 1876 did not envision the emergence of modern statutes of repose, and a mechanical application of the statute leads to the type of incongruous result against which this Court warned in Snyder.

B. The legislature's intent in enacting the Utah Product Liability Act statute of repose determines the applicability of Utah Code Ann. § 78-12-1 (1953).

In Millett v. Clark Clinic Corp., 609 P.2d 934 (Utah 1980), the plaintiff, who had not timely filed a medical malpractice action against the defendant, asserted that a tolling provision must be read in conjunction with the limitation period prescribed by the Utah Health Care Malpractice Act. After citing Utah Code Ann. §78-12-1 (1953), the Court stated that in order to determine whether subsequent legislation superseded existing provisions of Title 78, Chapter 12, the Court must consider the legislative motive in enacting the subsequent legislation. (609 P.2d at 936). Because the legislature did not intend the Utah Product Liability Act statute of repose to supersede existing statutes of limitations in the circumstances of this case (see discussion in Point II), Utah Code Ann. § 78-12-1 (1953) does not apply, and the two year limitation on wrongful death actions, Utah Code Ann. § 78-12-28(2) (1953), bars the plaintiff's claim.

POINT IV: THE PLAINTIFF'S RELIANCE ON MAXIMS OF  
STATUTORY CONSTRUCTION IS MISPLACED AND  
IGNORES THE LEGISLATURE'S INTENT IN  
ENACTING THE UTAH PRODUCT LIABILITY  
ACT.

A. The plaintiff bases his argument on a fatally flawed assumption.

The plaintiff argues that statutory construction principles mandate the conclusion that the two-year wrongful death limitation does not bar his action. His argument commences with the assumption that statutes of limitation and statutes of repose are indistinguishable and interchangeable. The argument proceeds on a corollary to his assumption--statutory construction principles used to choose between two competing statutes of limitation can also be used to choose between a statute of repose and a statute of limitation. As demonstrated in the defendants' opening brief and Points I and II here, the plaintiff's assumption is erroneous, thus invalidating the succeeding corollary and the resulting conclusion.

B. Maxims of statutory construction do not have the force of law and are useful only if they assist in ascertaining the legislature's intent.

This Court has always cautioned that statutory construction principles are only means to an end and do not have the force of law. In Salt Lake City v. Salt Lake County, 568 P.2d 738 (Utah 1977), Salt Lake County asserted that it was entitled to collect fees from Salt Lake City under a statutory interpretation based on

recognized statutory maxims. In addressing the county's argument, the Court stated:

But helpful as rules of construction often are, they are useful guides, but poor masters; and they should not be regarded as having any such rigidity as to have the force of law, or distort an otherwise natural meaning or intent. Their only legitimate function is to assist in ascertaining the true intent and purpose of the statute.

Id. at p. 741. The legislature's intent in enacting the Utah Products Liability Act is clear from the legislature's own stated intent, the perceived problem it addressed, and the statutory device it employed to resolve the problem. (See discussion Point II). Because the legislature's intent is clear, there is no need to resort to the maxims of dubious applicability upon which the plaintiff so rigidly relies.

POINT V: THE PLAINTIFF HAS FAILED TO CITE A SINGLE CASE SUPPORTING HIS POSITION ON THE ULTIMATE ISSUE PRESENTED BY THIS CROSS-APPEAL.

The plaintiff has taken issue with the cases cited by the defendants in which courts have held that a statute of repose does not extend to time to file an action beyond the time permitted by the applicable statute of limitation. Although these courts interpreted architects', builders', and engineers' statutes, they rendered their decisions based on principles applicable to all statutes of repose. That such universal principles exist is amply demonstrated by Berry v. Beech Aircraft Corp., 717 P.2d 670 (Utah



1985) in which this Court surveyed decisions interpreting architects', builders', engineers' and medical malpractice statutes of repose as well as product liability statutes. (See, 717 P.2d at 677-678).

Although the plaintiff argues that the defendants' cases do not apply to product liability statutes of repose, he has utterly failed to cite any case interpreting any statute of repose which supports his position on the ultimate issue presented by this cross-appeal. Indeed, to defendants' knowledge, such a case does not exist.

#### CONCLUSION

Because the Utah Legislature never intended the Utah Product Liability Act statute of repose to extend the time in which the plaintiff could file his action, the defendants respectfully submit that the Court should reverse the trial court's April 28, 1983 order.

DATED this 21<sup>st</sup> day of September, 1986.

CHRISTENSEN, JENSEN & POWELL, P.C.

By

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CERTIFICATE OF SERVICE

This is to certify that on this 25<sup>th</sup> day of September, 1986, four copies of the foregoing REPLY BRIEF OF RESPONDENTS AND CROSS-APPELLANTS SAAB-SCANIA OF AMERICA, INC. AND SAAB-SCANIA AB were mailed, postage prepaid, to:

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