

1986

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

Utah Supreme Court

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UTAH SUPREME COURT  
BRIEF

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IN THE SUPREME COURT

OF THE

STATE OF UTAH

860208

LARRY RAITHAUS, M.D.,

Plaintiff,

vs.

SAAB-SCANIA OF AMERICA, INC.,  
a Connecticut corporation;  
and SAAB-SCANIA AB, a Swedish  
corporation, KEN GARFF FOREIGN  
CARS, a Utah corporation,

Defendants.

Case No. 860208

Priority No. 13b

RESPONDENT'S BRIEF OF LARRY RAITHAUS, M.D.

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

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FILED

AUG 27 1986

Clerk, Supreme Court, Utah

IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

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

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RESPONDENT'S BRIEF OF LARRY RAITHAUS, M.D.

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APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL  
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STATEMENT OF THE CASE ON CROSS-APPEAL

The sole issue on defendants' cross-appeal is whether the trial court's application of the Product Liability Act's statute of limitations in 1983 was appropriate. This is a different issue from that raised on plaintiff's appeal from the trial court's 1986 order that the Product Liability Act's statute of limitations is still the applicable statute of limitations regardless of this court's ruling that the Product Liability Act is unconstitutional.

Defendants' cross-appeal states that the issue before the court is:

(1) Did the trial court err when it interpreted the Utah Product Liability Act statute of repose, Utah Code Annotated, Section 78-15-3 (1953), to be a statute of limitation which extended the two-year limitation on wrongful death actions otherwise mandated by Utah Code Annotated, Section 78-12-28 (1953)?

Stating the issue in this fashion is misleading it suggests that the trial court made its determination without considering the Utah Products Liability Act statute of limitations as a statute of repose.

The issue before the trial court in 1983 was which of two potentially applicable statutes of limitations should apply to the plaintiff's claim: the general two-year statute of limitation for wrongful death found in § 78-12-28(2), Utah Code Ann.

(Repl. Vol. 9A, 1977), or the special statute of limitation found in the Utah Products Liability Act, § 78-15-1 et seq., Utah Code Ann. (Repl. Vol. 9A, 1977) (hereinafter the "Act"). Accordingly, the trial court properly found that the Product Liability statute of limitation applied "specifically and exclusively to causes of action of the type asserted in plaintiff's complaint and is applicable to actions to recover damages for wrongful death which are based on these causes of action."

The trial court's determination, as well as the manner in which the trial court phrased the issue (which of two statutes of limitation were applicable), reflected the explicit intent of the legislature, as set forth in §§ 78-15-2 and 3 to create a statute of limitations which applied to product liability actions. As a result, during the period from 1977, when the Act was enacted, and December, 1985, when this Court held the Act unconstitutional, an injured plaintiff contemplating a product liability action in Utah could reasonably look to that section of the Act which specified the limitation periods for all product liability actions as the applicable timeframe for commencing such an action. The trial court's conclusion that the plaintiff's action was timely and the Act's six-year limitation period applied was proper.

The trial court's determination was based on (1) the fact that the statute of limitations set forth in the Product



Liability Act specifically included the type of action asserted by the plaintiff; and (2) general principles of statutory construction led to the conclusion that the Production Liability statute of limitation is the more specific, the legislature's intent to provide limitation periods for all cases where the gravamen of the complaint involved a defective product.

#### STATEMENT OF FACTS

Ronda M. Luther Raithaus died on July 2, 1979 from injuries sustained when the Saab automobile she and her husband Dr. Larry Raithaus were traveling in, burst into flames after driving off the paved highway in Little Cottonwood Canyon, R. 3-4. The Complaint in this action was filed on November 29, 1982, claiming damages for the death of Ronda M. Luther Raithaus, plaintiff's wife, R. 6. The Saab automobile in question was a 1976 model, R. 3, bought by Dr. Raithaus in February of 1977, R. 30, 64.

#### SUMMARY OF ARGUMENT

The trial court was correct in concluding that the statute of limitations contained in the Utah Product Liability Act was applicable to this action. This court's declaration that the statute was unconstitutional cannot act to deprive the plaintiff his day in Court. To the extent an action filed within

the then existing limitation period, the period becomes a vested component of plaintiff's action which he cannot be constitutionally deprived of by a later declaration of unconstitutionality.

## ARGUMENT

### POINT I

THE LIMITATION PERIODS SET FORTH IN THE  
UTAH PRODUCT LIABILITY ACT, SECTION 78-15-3,  
UTAH CODE ANNOTATED (REPL. VOL. 9A, 1977),  
APPLIES TO PLAINTIFF'S CLAIMS

The statute of limitations invoked by defendants, Utah Code Ann. § 78-12-28(2), (1977), provides as follows:

Within two years: . . . (2) An action  
to recover damages for the death of one caused  
by the wrongful act or neglect of another.

This section is one of the general limitation provisions which are collected in Chapter 12 of Title 78 of the Utah Code. The first section of Chapter 12 provides an introduction to, and governs, the limitation found at § 78-12-28(2). It states:

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

Utah Code Ann. § 78-12-1 (1977). (Emphasis added.) This product liability action is such a special case excluded from the general statute of limitation by § 78-12-1.

In 1977, the Utah Legislature enacted the Utah Product Liability Act, Utah Code Ann. § 78-15-1, et seq. (1977). Its title describes the purposes of the Act as follows:

*An act enacting Sections 78-15-1 through 78-15-6, Utah Code Annotated (1953); relating to product liability; creating a Utah Product Liability Act; setting forth the purpose and intent of the Act; establishing a statute of limitations for product liability cases . . .*

(1977 Utah Laws Ch. 149).

The special "statute of limitations for product liability cases" is found at § 78-15-3(1), Utah Code Annotated, (Repl. Vol. 9A, 1977). It provides, in pertinent part:

No action shall be brought for the recovery of damages for personal injury, death or damage to property more than six years after the date of initial purchase for use or consumption, or ten years after the date of manufacture, of a product, where that action is based upon, or arises out of, any of the following:

- (a) Breach of any implied warranties;
- (b) Defects in design, inspection, testing or manufacture;
- (c) Failure to warn;
- (d) Failure to properly instruct in the use of a product; or
- (e) Any other alleged defect or failure of whatsoever kind or nature in relation to a product.

(Emphasis added).

Section 78-12-1 and the Product Liability Act, when read in conjunction, unambiguously establish an exception to the general two-year statute of limitations if claims arise from the use of a defective product.

## POINT II

### ACCEPTED RULES OF STATUTORY CONSTRUCTION RENDER THE "TWO-YEAR" STATUTE OF LIMITATIONS INAPPLICABLE TO THIS ACTION

Not only does the clear language of Title 78 compel a finding that the limitation found at § 78-15-3(1), rather than that set forth at § 78-12-28(2), applies to this action, but accepted canons of statutory construction, when applied to this case, require application of the Utah Product Liability Act's statute of limitations.

- A. Where There is Doubt Regarding Which of Two Arguably Applicable Statute of Limitations to Apply in a Particular Case, the Longer of the Two Periods is Generally Preferred.

In Hardinge Company, Inc. v. Eimco Corporation, 1 Utah 2d 320, 266 P.2d 494 (1954), this Court was asked to decide whether the three-year limitation found at § 78-12-26(3) or the six-year limitation found at § 78-12-23 was applicable. The plaintiff could have stated a claim either for money paid under mistake, or for breach of contract. In addressing this question, the

Court noted that "[t]he principal question on appeal . . . is which limitation applies." (266 P.2d at 495). In resolving this dispute, this Court held:

If a substantial doubt exists as to which is the applicable statute of limitations, the longer rather than the shorter period of limitations is to be preferred.

(266 P.2d at 496).

The basis for this canon of statutory construction was explained by the Utah Supreme Court in Juab County Department of Public Welfare v. Summers, 19 Utah 2d 49, 426 P.2d 1 (1967). In Juab, the Court reiterated the above quoted language from Hardinge, supra, and explained that "the law does not look with favor upon the defeating of a just obligation if it can be properly avoided." (426 P.2d at 3). Courts in neighboring jurisdictions have similarly adopted this basic rule of statutory construction. See, e.g., Orr v. Lewis Central School District, 298 N.W. 2d 256 (Iowa 1980); Drug, Cosmetic & Beauty Trades Service, Inc. v. McFate, 14 Ariz. App. 7, 480 P.2d 30 (1971); Matthews v. Travellers Indemnity Insurance Company, 245 Ark. 247, 432 S.W. 2d 485 (1968).

B. Should Two Statutes Relating to the Same General Subject Matter be in Conflict, the More Specific of the Two Will Control.

In Millett v. Clark Clinic Corporation, 609 P.2d 934 (Utah 1980), The Utah Supreme Court considered the effect of an apparent conflict between two statutory provisions relating to statutes of limitation and adopted the following rule of construction in order to fulfill the legislature's intent:

. . . where the operation of two statutory provisions is in conflict, that provision which is more specific in its application will govern over that which is more general.

(609 P.2d at 936). This Court has uniformly applied the rule. See, Rammell v. Smith, 560 P.2d 1108 (Utah 1977); Bateman v. Board of Examiners, 7 Utah 2d 221, 322 P.2d 381 (1958); and Pacific Intermountain Express Company v. State Tax Commission, 7 Utah 2d 15, 316 P.2d 549 (1957).

The greater specificity of a given statute is compelling when enacted after the adoption of the more general statute. Bateman v. Board of Examiners, supra; Pacific Intermountain Express Company v. State Tax Commission, supra. Courts have uniformly held that where a later-enacted statute of limitations provides a different limitation period for actions based on a particular legal theory and, addresses the subject with greater specificity, the more recent enactment must be regarded as an exception to, or qualification of, the prior statute. (E.g.,

Payne v. Far-Mar-Company, 612 S.W.2d 54 (Mo. App. 1981) (limitation provision applicable to actions for breach of any contract for sale constituted exception to prior statute imposing different limitation on all actions based on written contracts); Nebraska Mil-Nic, Inc. v. Hall County, 187 Neb. 656, 193 N.W.2d 450 (1972) (special statute of limitations controls over a general statute because the special statute more properly expresses the legislative will).

The limitation provision invoked by defendants, which was adopted in 1951, applies generally to actions "to recover damages for the death of one caused by the wrongful act or neglect of another." Utah Code Ann. § 78-12-28(2) (1977). The statute of limitations found in the Product Liability Act applied specifically to any action "for the recovery of damages for . . . death . . . where that action is based upon, or arises out of, [b]reach of any implied warranties," "[d]efects in design, inspection, testing or manufacture," "[f]ailure to warn," "[f]ailure to properly instruct in the use of a product," or "[a]ny other alleged defect or failure of whatsoever kind or nature in relation to a product." Utah Code Ann. § 78-15-3(1) (1977). This limitation period, as the language of the Act indicates, applies only to a specific class of actions which claims, although previously included within the general language of § 78-12-28(2), have been excluded from the latter's limitation by legislative action.

The limitation provision contained in the Utah Product Liability Act, which expressly and specifically applies to actions seeking damages for death caused by the use of defective products, must be regarded as an exception to the prior general wrongful death statute of limitations.

### POINT III

#### A COURT CAN LOOK TO THE LEGISLATURE'S INTENT TO DETERMINE THE APPLICABILITY OF A STATUTE

A Court can look to the legislature's intent to determine the applicability of a statute, Matheson v. Crockett, 577 P.2d 948 (Utah 1978). The language of the Utah Product Liability Act, when read in conjunction with § 78-12-1, unambiguously requires application of the six-year statute of limitations of the Act to the plaintiff's action. In the instant case, the intent of the legislature, as set forth in § 78-15-2, is wholly consistent with the language of the Act and with application of the six-year limitation period in this action. § 78-15-2(3), provides:

In enacting this Act, it is the purpose of the legislature to provide a reasonable time within which actions may be commenced against manufacturers, while limiting the time to a specific period for which product liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.



#### POINT IV

CASE LAW DOES NOT SUPPORT DEFENDANTS'  
POSITION THAT A STATUTE OF REPOSE  
DOES NOT EXTEND THE LIMITATION OTHERWISE  
PROVIDED BY A STATUTE OF LIMITATION

Defendants, in their cross-appeal, cite several cases which purportedly stand for the proposition that a statute of repose does not extend the limitation otherwise provided by the applicable statute of limitation. Grissom v. North American Aviation, Inc., 326 F.Supp. 465 (M.D. Fla. 1971); O'Connor v. Altus, 67 N.J. 106, 335 A.2d 545 (N.J. 1975); Cadieux v. International Telephone and Telegraph Corporation, 593 F.2d 142 (1st Cir. 1979); Comptroller of Virginia ex rel. Virginia Military Institute v. King, 232 S.E.2d 895 (Va. 1977); Smith v. American Radiator and Standard Sanitary Corporation, 38 N.C. App. 457, 248 S.E.2d 462 (D.N.C. 1978) (overruled on other grounds). However, these cases may be distinguished from that of the plaintiff's case, since the statutes under which they were decided differ from the Utah Product Liability Act. Cadieux v. International Telephone and Telegraph Corporation, 593 F.2d 142 (1st Cir. 1979), for example, involved interpretation of a Rhode Island wrongful death statute with a two-year statute of limitation that had been amended. The amendment retained the two-year limitation and provided a ten-year period after the sale of a product as an additional limitation for commencement of an action. The

Rhode Island legislature intended that the two limitation periods should operate in conjunction with each other rather than separately as in the case at hand.


Another case, O'Connor v. Altus, 67 N.J. 106, 335 A.2d 547 (N.J. 1975), involved statutes that apply to recovery of damages in tort, contract or otherwise for bodily injury or wrongful death arising out of improvements to real property. The New Jersey statute, N.J.S.A. 2A: 14-1.1, specifically refers to tort, contract or other types of action, thereby implying that any other statutes which apply to these causes of action, including statutes of limitation, should be used in conjunction with Section 2A: 14-1.1. See also, Smith v. American Radiator and Standard Sanitary Corporation, 38 N.C. App. 457, 248 S.E. 462 (D.N.C. 1978) (interpreting a South Carolina statute which is identical in all material respects to the New Jersey statute); Grissom v. North American Aviation, Inc., 326 F.Supp. 465 (M.D. Fla. 1971) (construing a Florida statute that provides a 12-year limitation period within which actions might be brought against architects or professional engineers); Comptroller of Virginia ex rel. Virginia Military Institute v. King, 232 S.E.2d 895 (Va. 1977) (construing a Virginia statute which sets outside limits on tort or contract actions against architects for improper design). None of these cases involved product liability actions brought under a separate product liability statute that set out

its own period of limitation. Thus, statutes from other states contrast with the Utah Product Liability Act which establishes a limitation period for all actions based on breach of implied warranties; defects in design, testing, inspection or manufacture; failure to warn; failure to properly instruct in the use of a product and any other defect or failure in a product. The limitations period in the Utah Act became a vested component upon plaintiff's filing of the action (see plaintiff's Brief on Appeal).

#### CONCLUSION

The trial court was correct in concluding that the statute of limitations contained in the Utah Product Liability Act was applicable to this action. This court's declaration that the statute was unconstitutional cannot act to deprive the plaintiff his day in Court. To the extent an action filed within the then existing limitation period, the period becomes a vested component of plaintiff's action which he cannot be constitutionally deprived of by a later declaration of unconstitutionality. Therefore, plaintiff requests this Court reinstate the action and direct the trial court to proceed with a trial on the merits.

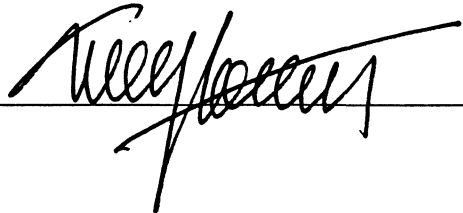
DATED this 26 day of August, 1986.

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that four (4) copies of the above and foregoing Respondent's Brief of Larry Raithaus, M.D. were mailed, postage prepaid thereon, this 26 day of August, 1986, to:

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