

2009

Kami Washington, and Joshephine Ishaya v. Joseph Phalen and Jonathen Kraft : Brief of Appellant

Utah Court of Appeals

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Richard H. Thornley; Parker Thornley & Critchlow; Attorneys for Appellants.

W. Kevin Tanner; Petersen & Associates; Attorneys for Defendants.

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Brief of Appellant, *Kami Washington, and Joshephine Ishaya v. Joseph Phalen and Jonathen Kraft*, No. 20090687 (Utah Court of Appeals, 2009).

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)	
KAMI WASHINGTON and)	
JOSHEPHINE ISHAYA,)	
)	APPELLANTS' BRIEF
Plaintiffs and Appellants,)	
)	
vs.)	Case No. 20090687-CA
)	
)	District Court No. 060901726PI
JOSEPH PHALEN and)	
JONATHAN KRAFT,)	
)	
Defendants and)	
Appellees,)	
)	

<p>W. KEVIN TANNER PETERSEN & ASSOCIATES 230 South 500 East Suite 400 Salt Lake City, Utah 84102 Attorneys for Defendants & Appellee Jonathen Kraft</p>	<p>RICHARD H. THORNLEY PARKER THORNLEY & CRITCHLOW 2610 Washington Boulevard Ogden, Utah 84402 Attorneys for Plaintiffs & Appellants</p>
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FILED
UTAH APPELLATE COURT

FEB 25 2010

IN THE UTAH COURT OF APPEALS

)	
KAMI WASHINGTON and)	
JOSHEPHINE ISHAYA,)	
	)	APPELLANTS' BRIEF
Plaintiffs and Appellants,)	
)	
vs.	)	Case No. 20090687-CA
)	
	)	District Court No. 060901726PI
JOSEPH PHALEN and)	
JONATHEN KRAFT,)	
)	
Defendants and)	
Appellees,)	
)	

Appeal from the Rulings of the Honorable Michael D. DiReda, Judge of the
Second Judicial District Court of Weber County, State of Utah

W. KEVIN TANNER PETERSEN & ASSOCIATES 230 South 500 East Suite 400 Salt Lake City, Utah 84102 Attorneys for Defendants & Appellee Jonathen Kraft	RICHARD H. THORNLEY PARKER THORNLEY & CRITCHLOW 2610 Washington Boulevard Ogden, Utah 84402 Attorneys for Plaintiffs & Appellants
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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 78A-3-102 (f) UCA

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether the trial court committed reversible error in requiring appellants to obtain prior court approval before proceeding under Rule 4 (d) (1) (A) URCP and 41-12a-505 UCA.
2. Whether the trial court committed reversible error and an abuse of discretion in denying appellants' motion for alternative service by publication filed after appellants received the court's ruling granting appellee Kraft's Motion to Quash Service.

The issues were preserved for appeal by appellants filing their Notice of Appeal within 30 days after the court's ruling dismissing the case with prejudice and entered on July 17, 2009.

STANDARD OF REVIEW

The trial court's findings will not be disturbed on appeal unless that court has misapplied the law to establish facts.

Ute-Cal Land Development v. Intermountain Stock Exchange et al., 628 P.2d 1278 (1981).

STATEMENT OF THE CASE

A. Nature of the Case.

This is a personal injury case involving a motor vehicle collision resulting in injuries to appellants who were very young girls at the time.

B. Course of the Proceedings.

After appellants' counsel and investigator were unable to locate appellees, appellants proceeded to serve appellees under Rule 4 (d) (1) (A) URCP and 41-12a-505 UCA (Utah's Non-Resident Motorist Statute) . (Add. 33)

Appellee Jonathen Kraft filed a motion to quash service on the grounds that prior court approval was necessary and was not done by appellants. (R. 38-40)

After the court granted appellee Kraft's Motion to Quash Service, appellants filed a Motion for Alternative Service by publication which was denied by the trial court and appellant's case was dismissed with prejudice. (Add. 48)

STATEMENT OF FACTS

This is a personal injury action in which appellants, ages 14 years, were passengers in a motor vehicle driven by appellee, 17 year old Jonathan Kraft, who made a left turn in front of an on-coming truck and was broadsided causing multiple injuries to appellants. (Add. 23, 26)

Being of young age, having been treated by numerous healthcare providers

and still suffering from their injuries, appellants decided to wait and see if time would heal their injuries before incurring future substantial medical and litigation expenses. This, of course, was always subject to court approval of such action and which was granted by the court. (Add. 23, 26 R. 23-4)

Several extensions were granted by Judge Parley R. Baldwin, a long time experience trial judge, under Rule 4 (b) (i) URCP. (R. 7-23)

When Judge Baldwin indicated that this was the final extension, appellants proceeded under Rule 4 (d) (1) (A) URCP and 41-12a 505 UCA (Utah's Non-Resident Motorist Statute), and served the Utah Division of Corporations and Commercial Code within the time frame allowed by Judge Baldwin. (R. 23-4, Add. 35)

Neither Rule 4 (d) (1) (A) nor the Utah Non-Resident Motorist Statute required prior court approval. (Add. 29, 33)

Appellants Affidavit of Compliance sets forth the efforts of appellants' counsel and the efforts of a retained private investigator to locate appellees. (Add. 37)

Thereafter, appellee Jonathen Kraft filed a Motion to Dismiss With Prejudice, or in the Alternative To Quash Service. (R. 38-40)

The trial court granted the Motion to Quash Service ruling that appellants

were required to obtain prior court approval before serving the Utah Division of Corporations and Commercial Code. (Add. 17, R.110)

In order to comply with the court's ruling, appellants immediately filed a Motion for Alternative Service by publication . (Add. 48, R.116) More detailed affidavits of appellants' counsel and private investigator were attached to said motion.

This motion was denied and the case dismissed with prejudice. (Add. 13, R. 135)

Appellants thereafter filed their Notice of Appeal.

SUMMARY OF ARGUMENTS

Issue No. 1

Appellants proceeded under Rule 4 (d) (1) (A) URCP, under the heading of "Personal service," which provides that any individual may be served "...by delivering a copy of the summons and/or the complaint to an agent authorized by appointment or by law to receive service of process." This part of Rule 4 does not require prior court approval.

Appellants complied with the provisions of 41-12a-505 UCA. This statute does not require prior court approval for service on the Division of Corporations and Commercial Code for a non-resident motorist.

The Provision of Rule 4 requiring prior court approval (Rule 4 (d) (4) (A) URCP) is in another section of Rule 4 entitled “Other service” and was not the section of Rule 4 that appellants proceeded under.

Issue No. 2

Since neither Rule 4 (d) (1) (A) URCP nor 41-12a 505 UCA required prior court approval, the trial court abused its discretion in not granting appellants Motion for Alternative Service by publication because of the unusual circumstances of this matter, the injustice that would result in dismissing this case with prejudice and the Utah courts long standing practice of liberally construing the Utah Rules of Civil Procedure to reach a just result.

ARGUMENT

POINT NO. 1

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REQUIRING APPELLANTS TO OBTAIN PRIOR COURT APPROVAL BEFORE PROCEEDING UNDER RULE 4(d) (1) (A) URCP AND 41-12a- 505 UCA (UTAH’S NON-RESIDENT MOTORIST STATUTE).

Neither Rule 4 (d) (1) (A) URCP nor 41-12a-505 UCA require prior court approval for service of process. (Add. 29, 33)

Rule 4 (d) (1) (A) URCP refers to a statutory service and 41-12a-505 UCA (Utah’s Non-Resident Motorist Statute) appoints the Utah Division of Corporations

and Commercial Code to receive service of process for a non-resident motorist.

In the court's ruling of May 18, 2009, granting appellees Motion to Quash Service, the court relied on the case of *Carlson v. Bos*, 740 P2d 1269 (Utah 1987). In his ruling to quash service, Judge DiReda candidly acknowledged that the *Carlson v. Bos* case did not specifically require prior court approval but felt that it was clear to him that this was the intent of the case. (Add. 19)

Appellants respectfully submit that Judge DiReda erred in treating the subject case as "alternative service" when in fact it was a statutory service involving another part of Rule 4. Appellants proceeded under Rule 4 (d) (1) (A) URCP and not Rule 4 (d) (4) (A) URCP entitled "Other service." (Add. 29, 31)

Requiring prior court approval under the wording of Rule 4 (d) (1) (A) URCP results in somewhat of a trap for a plaintiff's attorney.

POINT NO. 2

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND A N ABUSE OF DISCRETION IN DENYING APPELLANTS MOTION FOR ALTERNATIVE SERVICE FILED AFTER APPELLANTS RECEIVED THE COURT'S RULING QUASH ING SERVICE.

Because of the unusual circumstances involved in the subject case, i.e. requiring prior court approval not required by Rule 4 (d) (1) (A) URCP, appellants

respectfully submit that the trial court erred and abused its discretion in not granting appellants Motion for Alternative Service by publication and thereby allowing the case to proceed.

The Utah Courts have consistently held that the Utah Rules of Civil Procedure should be liberally construed to prevent injustice.

In the case of *Westinghouse Electric Supply Company v. Paul W. Larsen Contractor, Inc.*, (Utah 1975) 544 P2d 876, the Utah Supreme Court, after vacating an order of dismissal, held and observed as follows:

1. An order dismissing a suit was an abuse of discretion, not withstanding unusual delay in getting case to trial where the delay was due in large part to unusual circumstances.
2. The trial court has reasonable latitude of discretion but there may be justifiable excuse where a dismissal would result in an injustice.
3. Justifiable excuse may consist of several factors other than merely the length of time from filing the suit;
 - a. Conduct of both parties.
 - b. Opportunity each had to move the case.
 - c. Difficulty or prejudice to the other side.
 - d. The injustice that might result from a dismissal.

4. The Utah Supreme Court indicated that the trial court had failed to give proper weight to the higher priority and further observed “But it is even more important to keep in mind that the very reason for the existence of courts is to afford disputants an opportunity to be heard and to do justice between them.”

Plaintiff had never indicated that she wanted to abandon her case and a dismissal would be harsh, severe and result in injustice.

CONCLUSION

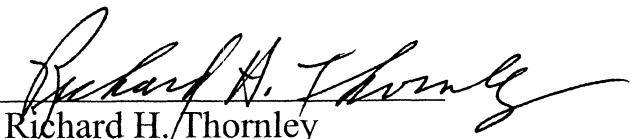
Appellants respectfully request this court to:

1. Set aside the trial court’s ruling quashing appellants service and holding that proceedings under Rule 4 (d) (1) (A) URCP and 41-12a-505 UCA do not require prior court approval; or in the alternative,

2. Vacating the trial court’s ruling denying appellants’ Motion for Alternative Service by publication and allowing appellants to proceed under said motion.

DATED AND SUBMITTED this 25 day of February, 2010.

Parker, Thornley & Critchlow

By: 
Richard H. Thornley
Attorneys for Plaintiffs &
Appellants

ADDENDUM

IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR WEBER COUNTY, STATE OF UTAH

FILED

JUL 17 2009

SECOND
DISTRICT COURT

KAMI WASHINGTON and JOSEPHINE
ISHAYA,

Plaintiffs,

vs.

JOSEPH PHALEN and JOHNATHEN
KRAFT,

Defendants.

**RULING DENYING
PLAINTIFFS' MOTION
FOR ALTERNATIVE
SERVICE AND ORDER
OF DISMISSAL**

JUL 17 2009

Case No. 060901726
Judge Michael D. DiReda

This matter comes before the Court on Plaintiffs' Motion for Alternative Service, filed on June 15, 2009. Having reviewed the memoranda of both parties, the Court denies the motion.

Plaintiffs previously attempted to serve the Defendants by means of alternative service, pursuant to Utah Code Ann. § 41-12a-505. That service was quashed in a ruling issued by this Court on May 18, 2009, because Plaintiffs "failed to move for the Court's permission before using alternative service." *Ruling Granting Motion to Quash Service*, p 4 Plaintiffs now move the Court for permission to perform again the service that was quashed.

Plaintiffs' motion must be denied because the time limit for effectuating service on Defendants has expired. Rule 4(b)(i) provides that service must be performed "no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown." Utah R. Civ. P. 4(b)(i). In this case, the Court granted nine extensions of the time to serve, the last of which was issued on December 11, 2008,

Ruling Denying Plaintiffs' Motion for Alternative Servi



and granted Plaintiffs 60 days to complete service. That period expired on February 10, 2009.

Plaintiffs contend that they should be allowed to perform service, despite the obvious lapse in the time period, because “Plaintiffs’ service under Rule 4(d)(1)(A) URPC (sic) was timely and the language of the rule did not require court approval. It wasn’t until this court’s ruling on May 18, 2009, that plaintiffs’ counsel was made aware of the prior court approval requirement.” Plaintiffs’ Reply Memorandum, p. 2. As before, when Plaintiffs improperly used an alternative method of service without court approval, Plaintiffs continue to misinterpret the law as applied to this form of service.

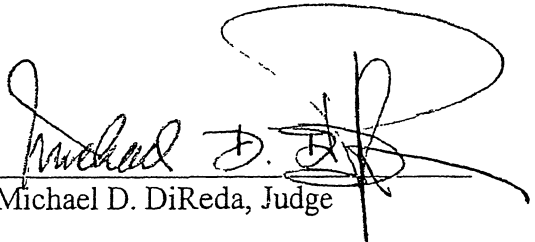
As this Court stated in its prior ruling, the Utah Supreme Court held in *Carlson v. Bos*, 740 P.2d 1269 (Utah 1987), that a plaintiff seeking to use the alternative service set out in Utah Code Ann. § 41-12a-505 “is now compelled to exercise the same due diligence to establish the statutory right to use an alternative form of process under the statute as is required by Rule 4(f) [now Rule 4(d)(4) on alternative service].” *Id.* at 1278. Therefore, the applicable rule of procedure is rule 4(d)(4), not rule 4(d)(1)(A) as Plaintiffs assert. Further, as the Supreme Court stated in its ruling, “[Rule 4(d)(4)] provides that the plaintiff desiring to use a substitute form of service must show that the prerequisites to such service have been met. The plaintiff acting pursuant to [Rule 4(d)(4)] must file a verified motion” in order to use alternative service. *Id.* at 1276 n.12.

Thus, the Utah Supreme Court made clear in 1987 that Utah law first requires a motion in order for a plaintiff to use the alternative method of service described in Utah Code Ann. § 41-12a-505. Plaintiffs’ counsel was put on notice of this requirement at that

time.¹ Any misinterpretation or oversight regarding the state of the law by Plaintiffs is not an excuse for their failure to properly serve process under rule 4.

Accordingly, Plaintiffs' Motion for Alternative Service must be denied. Furthermore, as process was not timely served in this action, rule 4(b)(i) provides that "the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative." Utah R. Civ. P. 4(b)(i). Therefore, on its own initiative, the Court orders this action dismissed

Dated this 15th day of July, 2009.


Michael D. DiReda, Judge

¹ It should be noted that the *Carlson* case is the lone annotation to Utah Code Ann. § 41-12a-505.

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of July, 2009, I sent a true and correct copy
of the foregoing ruling to Plaintiff and Defendant as follows:

Richard H. Thornley, Esq.
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W. Kevin Tanner, Esq.
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Deputy Court Clerk

FILED

MAY 18 2009

SECOND
DISTRICT COURTIN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH
WEBER COUNTY, OGDEN DEPARTMENTKAMI WASHINGTON and JOSEPHINE
ISHAYA,

Plaintiffs,

vs.

JOSEPH PHALEN and JOHNATHEN
KRAFT,

Defendants.

**RULING GRANTING
MOTION TO QUASH
SERVICE**Case No. 060901726
Judge Michael D. DiReda

MAY 18 2009

This matter is before the Court on Defendant's motion to dismiss, or in the alternative, to quash service. Having reviewed the memoranda of both parties, the Court grants the motion to quash service.

On August 31, 2000, the parties were involved in an auto accident. On August 19, 2004, 12 days before the expiration of the statute of limitations, Plaintiffs filed a lawsuit before Judge W. Brent West (Case No. 040906227). That suit was dismissed on April 8, 2005, because Plaintiffs had failed to serve Defendants within 120 days of filing the complaint. On March 30, 2006, nine days prior to the new expiration of the statute of limitations, Plaintiffs filed the current action, which was originally assigned to Judge Parley R. Baldwin. Plaintiffs did not serve Defendants within 120 days of filing this claim, but instead moved for an extension of 120 days, which Judge Baldwin granted.

Ruling Granting Motion to Quash Service



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060901726 PHALEN,JOSEPH

pages: 6

This was the first of nine extensions granted by the court, the last of which was signed on December 11, 2008, and granted a 60-day extension while indicating that no further extensions would be granted.

Over the course of the many extensions of time for service and more than eight years since the date of the accident, Plaintiffs unsurprisingly lost track of the whereabouts of Defendants. On January 29, 2009, Plaintiffs served the Complaint and Summons on the Division of Corporations and Commercial Code, and mailed a copy to Defendants' last known address, pursuant to Utah Code Ann. § 41-12a-505. On February 4, 2009, this case was assigned to Judge Michael D. DiReda. Defendants filed a motion to dismiss the case for violating Defendants' right to due process. Alternatively, Defendants ask the Court to quash the service, as Plaintiffs failed to request permission from the Court to perform alternative service. As the Court grants Defendants' request to quash service, it does not address Defendants' due process claims.

Utah Code Ann. § 41-12a-505 provides:

The use and operation by a nonresident or his agent, or of a resident who has departed Utah, of a motor vehicle on Utah highways is an appointment of the Division of Corporations and Commercial Code as the true and lawful attorney for service of legal process in any action or proceeding against the person arising from the use or operation of a motor vehicle over Utah highways which use or operation results in damages or loss to person or property.

Section 505 further provides that service may be made upon the Division of Corporations and Commercial Code, and that a plaintiff must send notice of process to the defendant's

last known address. Plaintiff's counsel in this case submitted an affidavit of compliance, as required by the statute, to the Court, which stated that Plaintiffs had been unsuccessful in their attempts to locate Defendants. These efforts included hiring a private investigator. At no time, however, did Plaintiffs request permission from the Court to perform the alternative service provided under Utah Code Ann. § 41-12a-505. Plaintiffs argue that permission was not needed. The Court disagrees.

In *Carlson v. Bos*, 740 P.2d 1269 (Utah 1987), the Utah Supreme Court addressed this form of alternative service of process, at that time codified as Utah Code Ann. § 41-12-8. In response to a challenge to the statute's constitutionality, the court determined that it was necessary to imply "certain limited procedural requirements to save this statute from constitutional infirmity." *Id.* at 1276. While the court's opinion did not specifically address whether a plaintiff seeking to use alternative service under § 41-12-8 was required to file a motion requesting the Court's permission to use alternative service, the language used by the supreme court makes it clear to this Court that a motion is necessary before using this statutory alternative.

In explaining the procedural prerequisites to using § 41-12-8 (now 41-12a-505), the court stated:

[W]e conclude that a plaintiff proceeding under section 41-12-8 cannot satisfy federal due process requirements by using substitute service of process mailed to a last known address without first having shown that diligent efforts have been made to locate the defendant. Only by making a satisfactory showing of diligence can such a plaintiff satisfy the requirements....

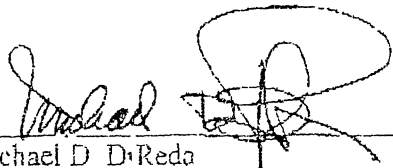
Id. (emphasis added). Further, the court explained, “we interpret the statute to require that before a plaintiff may effect service under section 41-12-8, there must be a showing that the facts justify the use of the statute, rather than Rule 4.” *Id.* (emphasis added). While the court does not identify to whom this “showing” must be made, the only logical inference is that the showing must be made to the court. The court’s language makes it clear that this showing of justification must be made before using the alternative form of service provided in the statute.

This position is solidified by the court’s holding that under the new procedural requirements set forth by the court, a “plaintiff is now compelled to exercise the same due diligence to establish the statutory right to use an alternative form of process under the statute as is required by Rule 4(f) [now Rule 4(d)(4) on alternative service].” *Id.* at 1278. As the Court stated in its opinion, “Rule 4(f) provides that the plaintiff desiring to utilize a substitute form of service must show that the prerequisites to such service have been met. The plaintiff acting pursuant to Rule 4(f) must file a verified motion” in order to use alternative service. *Id.* at 1276 n.12. In holding that a plaintiff seeking to serve under § 41-12-8 was bound to exercise the same due diligence as required by rule 4, which requires that a plaintiff file a motion in order to use alternative service, the court surely contemplated that a motion would be required prior to the alternative service. Plaintiff in this case, then, was required to file a motion pursuant to rule 4(d)(4) in order to use the alternative service set out in §41-12a-505. As Plaintiff failed to move for the Court’s permission before using alternative service, the service must be quashed.

Washington v Phalen
Case 060201726
Page Five

Accordingly, the Court grants Defendant's motion to quash service.

Dated this 18th day of May, 2009.



Michael D. DiReda
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of May, 2009, I sent a true and correct copy of the foregoing ruling to Plaintiff and Defendant as follows:

Richard H. Thornley, Esq.
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In-Court Clerk

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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
	)	AFFIDAVIT OF PLAINTIFF
	)	KAMI WASHINGTON
Plaintiffs,)	
)	
vs.)	
	)	Civil No. 060901726PI
JONATHAN KRAFT, JOSEPH)	
PHALEN and DOES 1 through 15,)	
	)	Judge: Parley R. Baldwin
Defendants.)	

STATE OF UTAH)
) ss.
COUNTY OF WEBER)

I, Kami Washington, being first duly sworn upon oath, deposes and says:

1. That I am one of the plaintiff's in the above entitled matter and was 14 years of age at the time of this accident.

2. That on August 31, 2000, I and plaintiff Josephine Ishaya were passengers in a motor vehicle driven by 17 year old defendant Jonathen Kraft who made a left turn in front of an on-coming truck and was broadsided.

3 I received injuries to my head, neck, shoulders, arms, chest, upper back, mid back and lower back.

4. I have been treated by numerous healthcare providers but my injuries and symptoms continue up to the present time.

5 I experience migraine headaches, sometimes weekly and sometimes monthly, and take Ibuprofen and Excedrin daily to try and control these headaches

6. I continue to experience neck pain with restricted lateral movement of my neck together with left hip pain. I take prescription Ibuprofen for this.

7. I continue to receive medical treatment at the Ogden Clinic on an as-needed basis.

8. I also have to restrict my physical activities.

9. In March, 2009, I had a migraine headache that lasted for two weeks.

10. Since I was only 14 years of age at the time of the collision, and since I have been treated by numerous healthcare providers for my injuries in this collision, and since my symptoms and injuries continued after the treatment, I decided to wait and see if the passage of time would heal my injuries and symptoms. It hasn't.

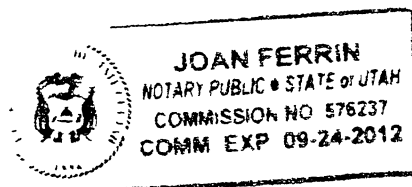
11. After the passage of time, I planned to try and negotiate a settlement before incurring substantial litigation expenses.

12. All of this action was only to take place if the Court approved our requests
for additional time

K Washington
Kam Washington

Subscribed and sworn to before me this 15th day of April, 2009

Joan Ferrin
Notary Public



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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
	)	AFFIDAVIT OF PLAINTIFF
	)	JOSEPHINE ISHAYA
Plaintiffs,)	
)	
vs.)	
	)	Civil No. 060901726PI
JONATHAN KRAFT, JOSEPH)	
PHALEN and DOES 1 through 15,)	
	)	Judge: Parley R. Baldwin
Defendants.)	

STATE OF UTAH)
) ss.
COUNTY OF WEBER)

I, Josephine Ishaya, being first duly sworn upon oath, deposes and says:

1. That I am one of the plaintiff's in the above entitled matter and was
14 years of age at the time of this accident.

2. That on August 31, 2000, I and plaintiff Kami Washington were passengers in a motor vehicle driven by 17 year old defendant Jonathen Kraft who made a left turn in front of an on-coming truck and was broadsided.

3. I received injuries to my head, neck, shoulders, arms, chest, upper back and lower back.

4. I have been treated by numerous healthcare providers but my injuries and symptoms continue up to the present time.

5. I experience migraine headaches with nausea on a weekly basis and take Ibuprofen and Excedrin daily to try and control these headaches. I am unable to take Loratab or stronger medication because it interferes with my work as a nurse.

6. I continue to experience neck pain on a daily basis with continued limited lateral motion to my right. I take Ibuprofen and Excedrin for this.

7. I continue to experience intermittent low back pain on a weekly basis depending on my activities. My duties as a nurse require me to lift patients and equipment.

8. I currently go to the Roy-Ogden Clinic for medical treatment on an as-needed basis.

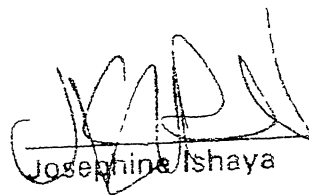
9. I can't sit or study for long periods of time or do desk work for long periods because of my injuries.

LAW OFFICES OF
PARKER, THORNLEY & CRITCHLOW
2610 WASHINGTON BOULEVARD
P.O. BOX 107
OGDEN, UTAH 84402

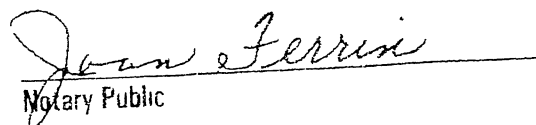
10. Since I was only 14 years of age at the time of the collision, and since I have been treated by numerous healthcare providers for my injuries in this collision, and since my symptoms and injuries continued after this treatment, I decided to wait and see if the passage of time would heal my injuries and symptoms. It hasn't.

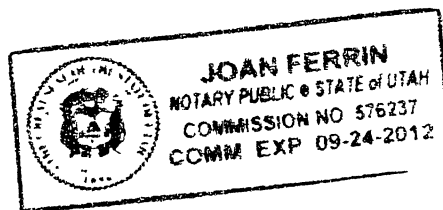
11. After the passage of time, I planned to try and negotiate a settlement before incurring substantial litigation expenses.

12. All of this action was only to take place if the Court approved our requests for additional time


Josephine Ishaya

Subscribed and sworn to before me this 15th day of April, 2009.


Notary Public



Rule 4. Process.

(a) *Signing of summons.* The summons shall be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and served.

(b)(i) *Time of service.* In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative.

(b)(ii) In any action brought against two or more defendants on which service has been timely obtained upon one of them,

(b)(ii)(A) the plaintiff may proceed against those served, and

(b)(ii)(B) the others may be served or appear at any time prior to trial.

(c) *Contents of summons.*

(c)(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(c)(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) *Method of service.* Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(d)(1) *Personal service.* The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(d)(1)(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and/or the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and/or the complaint to an agent authorized by appointment or by law to receive service of process;

(d)(1)(B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and the complaint to the infant and also to the infant's father, mother or guardian or, if none can be found within the state, then to any person having the care and control of the infant, or with whom the infant resides, or in whose service the infant is employed;

(d)(1)(C) Upon an individual judicially declared to be of unsound mind or incapable of conducting the person's own affairs, by delivering a copy of the summons and the complaint to the person and to the person's legal represen-

tative if one has been appointed and in the absence of such representative, to the individual, if any, who has care, custody or control of the person;

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and the complaint to the person who has the care, custody, or control of the individual to be served, or to that person's designee or to the guardian or conservator of the individual to be served if one has been appointed, who shall, in any case, promptly deliver the process to the individual served;

(d)(1)(E) Upon any corporation not herein otherwise provided for, upon a partnership or upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy of the summons and the complaint to the defendant. If no such officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, an office or place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of such office or place of business;

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and the complaint to the recorder;

(d)(1)(G) Upon a county, by delivering a copy of the summons and the complaint to the county clerk of such county;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and the complaint to the superintendent or business administrator of the board;

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and the complaint to the president or secretary of its board;

(d)(1)(J) Upon the state of Utah, in such cases as by law are authorized to be brought against the state, by delivering a copy of the summons and the complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit, by delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary.

(d)(2) *Service by mail or commercial courier service.*

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) *Service in a foreign country.* Service in a foreign country shall be made as follows:

(d)(3)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(3)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(3)(B)(i) in the manner prescribed by the law of the foreign country for

(d)(3)(B)(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally a copy of the summons and the complaint or by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(d)(3)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(4) *Other service.*

(d)(4)(A) Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

(d)(4)(B) If the motion is granted, the court shall order service of process by publication or by other means, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court's order shall be served upon the defendant with the process specified by the court.

(d)(4)(C) In any proceeding where summons is required to be published, the court shall, upon the request of the party applying for publication, designate the newspaper in which publication shall be made. The newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made and shall be published in the English language.

(e) *Proof of service.*

(e)(1) If service is not waived, the person effecting service shall file proof with the court. The proof of service must state the date, place, and manner of service. Proof of service made pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent authorized by appointment or by law to receive service of process. If service is made by a person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.

(e)(2) Proof of service in a foreign country shall be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court. When service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(3) Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(f) *Waiver of service; Payment of costs for refusing to waive.*

(f)(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive service of a summons. The request shall be mailed or delivered to the person upon whom service is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the defendant at least 20 days from the date on which the request is sent to return the waiver, or 30 days if addressed to a defendant outside of the United States, and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the Appendix of Forms attached to these rules.

(f)(2) A defendant who timely returns a waiver is not required to respond to the complaint until 45 days after the date on which the request for waiver of service was mailed or delivered to the defendant, or 60 days after that date if addressed to a defendant outside of the United States

(f)(3) A defendant who waives service of a summons does not thereby waive any objection to venue or to the jurisdiction of the court over the defendant

(f)(4) If a defendant refuses a request for waiver of service submitted in accordance with this rule, the court shall impose upon the defendant the costs subsequently incurred in effecting service

(Amended effective March 1, 1988, April 1, 1990 April 1, 1996, November 1, 2001, November 1, 2002, April 1, 2004, April 1, 2006)

Advisory Committee Note — Rule 4 constitutes a substantial change from prior practice. The rule modernizes and simplifies procedure relating to service of process. Although this rule and Rule 3 retain the ten-day summons procedure for commencement of actions, this rule endeavors to make practice under the ten-day summons provision more consistent with practice in actions commenced by the filing of a complaint. The rule retains portions of prior Rule 4, adopts portions of the present federal Rule 4, and adopts entirely new language in other areas. The rule eliminates the statement (appearing in paragraph (m) of the prior rule) that all writs and process may be served by any constable of the court. In the committee's view, this rule does not properly deal with the question of who may serve types of process other than the summons and complaint. In recommending the elimination of paragraph (m) the committee did not intend to change the law governing eligibility to serve such other process.

Paragraph (a) This paragraph eliminates the prior rule's reference to the issuance of summonses. See paragraph (b). Otherwise the paragraph is identical to the former paragraph (a).

Paragraph (b) This paragraph, a substantial change from the prior rule, requires that in an action commenced under Rule 3(a)(1), the summons, together with a copy of the complaint, must be served within 120 days of the filing of the complaint. The time period was borrowed from Rule 4(j), Federal Rules of Civil Procedure.

Paragraph (c) This paragraph makes minor revisions to the corresponding paragraph of the prior rule. In addition to data historically required to appear in the summons, the address of the court and information concerning the plaintiff or plaintiff's attorney are also required.

Paragraph (d) In prescribing the persons who may serve process, this paragraph eliminates the prior rule's distinction between in-state and out-of-state service. The paragraph is consistent with other changes in the rule designed to simplify and unify practice for in-state and out-of-state service. In order to be eligible to serve a summons or complaint, persons who are not sheriffs or other law enforcement personnel must be at least 18 years of age at the time of service. For eligibility to make service in a foreign country, see paragraph

Subparagraph (d)(1)(A) presents the general rule for personal service on individuals who are not infants, incompetent, or incarcerated. Subparagraph (B) deals with service on infants and subparagraph (C) with service on incompetent persons. Subparagraphs (A), (B) and (C) are patterned after Rule 4(e), Federal Rules of Civil Procedure. Subparagraph (D) deals with service on persons who are incarcerated or committed to the custody of a state institution. Subparagraph (E) deals with service on business entities. Subparagraphs (F) through (I) change and modernize service on political subdivisions of the state. Subparagraphs (J) and (K) provide for service on the state and its departments, agencies, boards and commissions with only minor changes from the prior rule. Subparagraph (d)(2) adds a provision for service by mail or commercial courier service within any judicial district of the United States. The term "mail" refers to services provided by the United States Postal Service. The term "commercial courier service" refers to businesses that provide for the delivery of documents. Examples of "commercial courier service" include Federal Express and United Parcel Service. Methods of service by mail or commercial courier service must provide for a document indicating receipt. Subparagraphs (A) and (B) specify who must sign the document indicating receipt. For service under Subparagraph (d)(2) to be effective, the court must be clearly convinced that the proper person signed the document indicating receipt. Infants or incompetent persons may not be served by mail or commercial courier service. Subparagraph (C) details when service by mail or commercial courier service is complete.

Paragraph (d)(3) This paragraph provides several alternative means by which service must be made in foreign countries and provides for proof of such service.

Paragraph (d)(4) This paragraph replaces most of paragraph (f) of the prior rule. It is designed to permit alternative means of service where the identity or whereabouts of the person to be served is unknown, where personal service is impracticable, or where a party avoids personal service. Under the circumstances identified in the rule, this paragraph permits the court to fashion means of service reasonably calculated to apprise the parties of the pendency of the action. Use of this provision is not limited to actions traditionally considered *in rem* or *quasi in rem*. See *Carlson v Bos*, 740 P.2d 1269, 1272 (Utah 1987). The present

(2) If a judgment rendered against the principal within the coverage of the bond is not satisfied within 60 days after judgment becomes final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action in the name of the department against the surety executing the bond.

History: C. 1953, 41-12a-405, enacted by L. 1985, ch. 242, § 48; 1991, ch. 203, § 3; 2008, ch. 371, § 4.

ment, effective January 1, 2009, substituted "Subsection 41-12a-103(9)(c)" for "Subsection 41-12a-103(9)(b)" in (1)

Amendment Notes. — The 2008 amend-

41-12a-407. Certificate of self-funded coverage as proof of owner's or operator's security.

(1) The department may, upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has:

(a) more than 24 motor vehicles; and

(b) deposits, in a form approved by the department, securities in an amount of \$200,000 plus \$100 for each motor vehicle up to and including 1,000 motor vehicles and \$50 for every motor vehicle over 1,000 motor vehicles.

(2) Persons holding a certificate of self-funded coverage under this chapter shall pay benefits to persons injured from the self-funded person's operation, maintenance, and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under Section 31A-22-302.

(3) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department may upon reasonable grounds, cancel the certificate. Failure to pay any judgment up to the limit under Subsection 31A-22-304(2) within 30 days after the judgment is final is a reasonable ground to cancel the certificate.

(4) Any government entity with self-funded coverage for government-owned motor vehicles under Title 63G, Chapter 7, Governmental Immunity Act of Utah, meets the requirements of this section.

History: C. 1953, 41-12a-407, enacted by L. 1985, ch. 242, § 48; 1991, ch. 203, § 4; 2005, ch. 102, § 13; 2008, ch. 382, § 584.

Amendment Notes. — The 2008 amendment, effective May 5, 2008, updated references to conform to the recodification of Title 63

NOTES TO DECISIONS

Cited in *Li v Zhang*, 2005 UT App 246, 527
Utah Adv Rep 7, 120 P3d 30

PART 5

POST-ACCIDENT SECURITY REQUIREMENTS AND SATISFACTION OF JUDGMENTS

41-12a-505. Effect upon nonresident of use of state highways.

(1) (a) The use and operation by a nonresident or his agent, or of a resident who has departed Utah, of a motor vehicle on Utah highways is an appointment of the Division of Corporations and Commercial Code as the true and lawful attorney for service of legal process in any action or proceeding against the person arising from the use or operation of a motor

vehicle over Utah highways which use or operation results in damages or loss to person or property.

(b) The use or operation referenced in Subsection (1) is an agreement that process shall, in any action against the person in which there is such service, be of the same legal force and validity as if served upon him personally in Utah.

(2) (a) Service of process under Subsection (1) is made by serving a copy upon the Division of Corporations and Commercial Code or by filing a copy in that office with payment of a reasonable fee.

(b) The plaintiff shall, within ten days after service of process, send notice of the process together with plaintiff's affidavit of compliance with this section to the defendant by registered mail at the defendant's last-known address.

(3) (a) The court in which the action is pending may order any continuance necessary to afford the defendant reasonable opportunity to defend the action, but not exceeding 90 days from the date of filing the action in court.

(b) The reasonable fee paid by the plaintiff to the Division of Corporations and Commercial Code is taxed as costs if the plaintiff prevails.

(c) The division shall keep a record of all process served showing the day and hour of service.

History: C. 1953, 41-12a-505, enacted by L. 1985, ch. 242, § 48; 1989, ch. 40, § 1; 2006, ch. 127, § 4.

Amendment Notes. — The 2006 amendment, effective May 1, 2006, subdivided the subsections; in Subsections (2)(a) and (3)(b),

substituted "reasonable fee" for "\$5 fee", and made stylistic changes

Cross-References. — Division of Corporations and Commercial Code, Title 13, Chapter 1a.

PART 8

UNINSURED MOTORIST IDENTIFICATION DATABASE PROGRAM

Sunset Act. — See Section 63I-1-241 for the repeal date of this part

41-12a-803. Program creation — Administration — Selection of designated agent — Duties — Rulemaking — Audits.

(1) There is created the Uninsured Motorist Identification Database Program to:

(a) establish an Uninsured Motorist Identification Database to verify compliance with motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other provisions under this part;

(b) assist in reducing the number of uninsured motor vehicles on the highways of the state;

(c) assist in increasing compliance with motor vehicle registration and sales and use tax laws;

(d) assist in protecting a financial institution's bona fide security interest in a motor vehicle; and

(e) assist in the identification and prevention of identity theft and other crimes.

(2) The program shall be administered by the department with the assistance of the designated agent and the Motor Vehicle Division.

2150 10

Richard H. Thornley, #3252
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Attorneys for Plaintiffs
2610 Washington Blvd.
P. O. Box 107
Ogden, Utah 84402
Telephone: (801) 399-3303

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
	)	NOTICE OF SERVICE OF
	)	PROCESS
Plaintiffs,)	
)	
vs.)	
	)	Civil No. 060901726PI
JONATHAN KRAFT, JOSEPH)	
PHALEN and DOES 1 through 15,)	
	)	Judge:ParleyR.Baldwin
Defendants.)	

Plaintiff, by and through her counsel of record, pursuant to 41-12 a-505, UCA 1953, as amended, hereby gives notice of service of process on defendants Jonathon Kraft and Joseph Phalen on January 29, 2009, when plaintiff's counsel filed two copies of the attached Summons and Complaint in the office of the Utah Division of

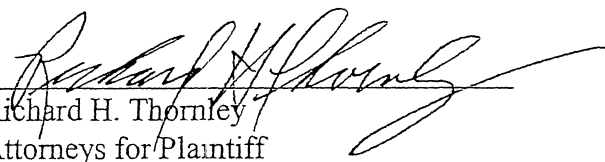
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2610 WASHINGTON BOULEVARD
P. O. BOX 107
OGDEN, UTAH 84402

Corporations and Commercial Code and by paying a reasonable fee of \$12.00 for such filing.

On January 29, 2009 this Notice of Service of Process together with the attached Summons, Complaint and Affidavit of Compliance were mailed to defendants Jonathen Kraft and Joseph Phalen at their last known addresses by registered mail and within ten days after service of process.

DATED this 29th day of January, 2009.

PARKER, THORNLEY & CRITCHLOW

By: 
Richard H. Thornley
Attorneys for Plaintiff

PARKER, THORNLEY & CRITCHLOW
2610 WASHINGTON BOULEVARD
P O BOX 107
OGDEN, UTAH 84402

Richard H. Thornley, #3252
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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
	)	PLAINTIFFS' AFFIDAVIT OF
Plaintiffs,	)	COMPLIANCE
)	
vs.)	
	)	Civil No. 060901726PI
JONATHEN KRAFT, JOSEPH)	
PHALEN and DOES 1 through 15,)	
	)	Judge: Parley R. Baldwin
Defendant)	

Plaintiff, by and through her counsel of record, hereby submits the following
Affidavit of Compliance pursuant to 41-12 a-505, UCA 1953, as amended:

STATE OF UTAH)
) ss,
COUNTY OF WEBER)

Richard H. Thornley, being first duly sworn upon oath, deposes and says:

1. Affiant is attorney of record for plaintiffs and is in charge of locating

defendants Jonathen Kraft and Joseph Phalen.

2. On behalf of plaintiffs, affiant retained the services of private investigator, Kelly Call DBA Insurance Company Support Services, for the purpose of locating defendants Jonathen Kraft and Joseph Phalen.

3. Said private investigator was unable to locate defendants Jonathen Kraft and Joseph Phalen residing within the state of Utah, and listed the following addresses as their last known respective addresses:

Jonathen Kraft
5187 South 3175 West
Roy, Utah 84067

Joseph Phalen
2915 Madison Avenue
Ogden, Utah 84403

4. Affiant has also checked with the Utah telephone information service trying to locate defendants Jonathen Kraft and Joseph Phalen and a state wide search showed no listings for said defendants in Utah.

5. Affiant states, upon information and belief, that defendants Jonathen Kraft and Joseph Phalen no longer are residents of the State of Utah and have departed Utah.

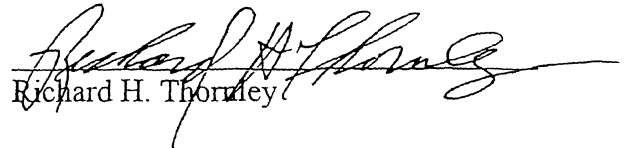
6. On or about 8/31/2000 in Ogden, Weber County, Utah defendants Jonathen Kraft and Joseph Phalen operated their respective motor vehicles causing

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P. O. BOX 107
OGDEN, UTAH 84402

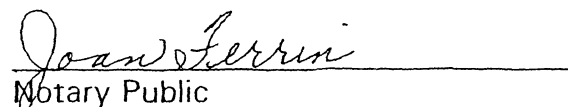
injuries and damages to plaintiffs.

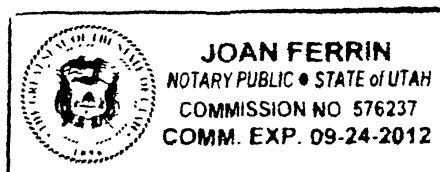
7. On January 29, 2009, affiant filed two copies of the attached Summons and Complaint in the office of the Utah Division of Corporations and Commercial Code and paid a reasonable fee of \$12.00.

8. On January 29, 2009, and within 10 days after service of process, affiant, by registered mail, mailed to defendants Jonathen Kraft and Joseph Phalen a copy of the subject Notice of Service of Process, and copies of the attached Summons, Complaint and Plaintiff's Affidavit of Compliance to the last known addresses of defendants Jonathen Kraft and Joseph Phalen at the addresses described in paragraph No. 3 herein.


Richard H. Thornley

Subscribed and sworn to before me this 29th day of January, 2009.


Notary Public



LAW OFFICES OF
PARKER, THORNLEY & CRITCHLOW
2610 WASHINGTON BOULEVARD
P. O. BOX 107
OGDEN, UTAH 84402

Richard H. Thornley, #3252
PARKER, THORNLEY & CRITCHLOW
Attorneys for Plaintiffs
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Ogden, Utah 84402
Telephone: (801) 399-3303

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
	)	SUMMONS
)	
Plaintiffs,)	
)	
vs.)	
	)	Civil No. 060901726PI
JONATHAN KRAFT,)	
JOSEPH PHALEN and)	
DOES 1 through 15,)	
	)	Judge: Parley R. Baldwin
Defendants.)	

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file an answer in writing to the attached Complaint with the Clerk of the above-entitled Court at the Justice Complex, 2525 Grant Avenue, Ogden, Utah 84401, and to serve upon, or mail to, Richard H.

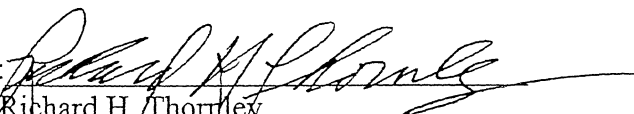
PARKER, THORNLEY & CRITCHLOW
2610 WASHINGTON BOULEVARD
P O BOX 107
OGDEN, UTAH 84402

Thornley, of the firm of PARKER, THORNLEY & CRITCHLOW, attorneys for plaintiffs, at 2610 Washington Boulevard, P.O. Box 107, Ogden, Utah 84402, telephone 801-399-3303, a copy of said answer, within 20 days after service of this Summons upon you.

If you fail so to do, judgment by default will be taken against you for the relief demanded in said Complaint, which has been filed with the Clerk of said Court and a copy of which is hereto annexed and herewith served upon you.

DATED this 29th day of January, 2009.

PARKER, THORNLEY & CRITCHLOW

By: 
Richard H. Thornley
Attorneys for Plaintiff

LAW OFFICES OF
PARKER, THORNLEY & CRITCHLOW
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Richard H. Thornley, #3252
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Telephone: (801) 399-3303

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and
JOSEPHINE ISHAYA,

Plaintiffs,

vs.

JONATHAN KRAFT, JOSEPH
PHALEN and DOES 1 through 15,

Defendants.

COMPLAINT

Civil No. 060901726 PJ

Judge: Parley R. Baldwin

Plaintiffs allege as follows:

FIRST CAUSE OF ACTION

1. The subject action arose in Weber County, Utah.
2. At all times mentioned herein, defendants DOES 1 through 15 were individuals, associations, partnerships, and/or corporations who are liable for the negligence of the other named defendants or who negligently caused and/or contributed to the injuries and damages sustained by plaintiffs. The identities of defendants DOES 1 through 15 are unknown to plaintiffs at this time. They will be designated by their true names as soon as such are known to plaintiffs.

3. On or about August 31, 2000 on SR79 at its intersection with Pennsylvania Avenue in Ogden, Weber County, Utah, defendant JOHNATHEN KRAFT, with plaintiff KAMI WASHINGTON as a passenger in his vehicle, negligently and carelessly operated a motor vehicle, causing it to collide with a motor vehicle driven by defendant JOSEPH PHALEN, causing severe, painful and disabling injuries to plaintiff KAMI WASHINGTON'S head, neck, shoulders, arms, chest, back and legs, to her damage in a sum to be determined by the evidence at the time of trial.

4. At said time and place, defendant JOSEPH PHALEN negligently and carelessly operated a motor vehicle causing it to collide with a vehicle driven by defendant JOHNATHEN KRAFT, with plaintiff KAMI WASHINGTON as a passenger in the KRAFT vehicle, thereby causing and contributing to the injuries and damages to plaintiff KAMI WASHINGTON as set forth herein.

5. As a further proximate result of the negligence of defendants, plaintiff KAMI WASHINGTON has incurred travel expenses for medical care, medical expenses for hospital services, ambulance services, medical testing, physical therapy, medications, x-rays, and for the medical care of physicians, in a sum to be determined by the evidence at the time of trial.

6. As a further proximate result of the negligence of defendants, plaintiff KAMI WASHINGTON will be compelled to incur medical expenses in the future in a sum to be determined by the evidence at the time of trial.

7. Plaintiff KAMI WASHINGTON is entitled to interest on all special damages from the date of the subject accident to the date of judgment.

8. The injuries of plaintiff KAMI WASHINGTON are permanent.

9. Plaintiff KAMI WASHINGTON originally filed her personal injury suit against defendants in the District Court of Weber County, State of Utah, on August 19, 2004.

10. Plaintiff KAMI WASHINGTON did not serve defendants with a copy of the Summons and Complaint in order to pursue settlement negotiations without incurring substantial legal expenses.

11. On April 8, 2005, the court, on its own motion, entered its Order of Dismissal in the subject case dismissing it without prejudice and not on the merits since the Summons and Complaint had not been served on defendants within 120 days of the Complaint being filed. The aforesaid Order was filed by the court on April 8, 2005. The statute of limitations was tolled by said former action which failed otherwise than on its merits.

12. Pursuant to 78-12-40 UCA, 1953 as amended, plaintiff KAMI WASHINGTON has one year after a dismissal without prejudice and not on the merits to re-file her law suit.

WHEREFORE, plaintiff KAMI WASHINGTON demands judgment against defendants for such special and general damages as may be shown by the proof at the time of trial, interest on special damages, for her costs incurred herein.

SECOND CAUSE OF ACTION

1. Plaintiff JOSEPHINE ISHAYA hereby incorporates by reference paragraphs 1 and 2 of the FIRST CAUSE OF ACTION herein.

2. On or about August 31, 2000 on SR79 at its intersection with Pennsylvania Avenue in Ogden, Weber County, Utah, defendant JOHNATHEN KRAFT, with plaintiff JOSEPHINE ISHAYA as a passenger in his vehicle, negligently and

carelessly operated a motor vehicle, causing it to collide with a motor vehicle driven by defendant JOSEPH PHALEN, causing severe, painful and disabling injuries to plaintiff JOSEPHINE ISHAYA'S head, neck, shoulders, arms, throat, chest, back and hips, to her damage in a sum to be determined by the evidence at the time of trial.

3. At said time and place, defendant JOSEPH PHALEN negligently and carelessly operated a motor vehicle causing it to collide with a vehicle driven by defendant JOHNATHEN KRAFT, with plaintiff JOSEPHINE ISHAYA as a passenger in the KRAFT vehicle, thereby causing and contributing to the injuries and damages to plaintiff JOSEPHINE ISHAYA as set forth herein.

4. As a further proximate result of the negligence of defendants, plaintiff JOSEPHINE ISHAYA has incurred travel expenses for medical care, medical expenses for hospital services, ambulance services, medical testing, physical therapy, medications, x-rays, and for the medical care of physicians, in a sum to be determined by the evidence at the time of trial.

5. As a further proximate result of the negligence of defendants, plaintiff JOSEPHINE ISHAYA will be compelled to incur medical expenses in the future in a sum to be determined by the evidence at the time of trial.

6. Plaintiff JOSEPHINE ISHAYA is entitled to interest on all special damages from the date of the subject accident to the date of judgment.

7. The injuries of plaintiff JOSEPHINE ISHAYA are permanent.

8. Plaintiff JOSEPHINE ISHAYA originally filed her personal injury suit against defendants in the District Court of Weber County, State of Utah on August 19, 2004.

9. Plaintiff JOSEPHINE ISHAYA did not serve defendants with a copy of the

Summons and Complaint in order to pursue settlement negotiations without incurring substantial legal expenses.

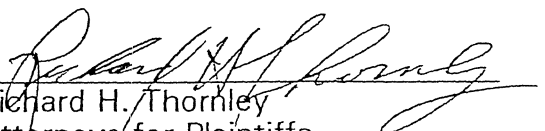
10. On April 8, 2005, the court, on its own motion, entered its Order of Dismissal in the subject case dismissing it without prejudice and not on the merits since the Summons and Complaint had not been served on defendants within 120 days of the Complaint being filed. The aforesaid Order was filed by the court on April 8, 2005. The statute of limitations was tolled by said former action which failed otherwise than on its merits.

11. Pursuant to 78-12-40 UCA, 1953 as amended, plaintiff JOSEPHINE ISHAYA has one year after a dismissal without prejudice and not on the merits to re-file her law suit.

WHEREFORE, plaintiff JOSEPHINE ISHAYA demands judgment against defendants for such special and general damages as may be shown by the proof at the time of trial, interest on special damages, for her costs incurred herein..

DATED this 30th day of March, 2006.

PARKER, THORNLEY & CRITCHLOW

By 
Richard H. Thornley
Attorneys for Plaintiffs

PARKER, THORNLEY & CRITCHLOW
2610 WASHINGTON BOULEVARD
P O BOX 107
OGDEN, UTAH 84402

Plaintiff's address - Kami Washington
1975 West 3725 South
Roy, Utah 84067

Plaintiff's address - Josephine Ishaya
630 - 23rd Street
Apartment No. 4D
Ogden, Utah 84401

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P. O. Box 107
Ogden, Utah 84402
Telephone: (801) 399-3303

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
	)	PLAINTIFFS' MOTION FOR
	)	ALTERNATIVE SERVICE
Plaintiffs,)	
vs.)	
	)	Civil No. 060901726PI
JONATHAN KRAFT, JOSEPH)	
PHALEN and DOES 1 through 15,)	
	)	Judge: Michael D. DiReda
Defendants.)	

Plaintiffs hereby move the court for permission from the court to perform alternative service of process on defendants upon the following grounds:

1. Within the time frame allowed by Judge Baldwin, plaintiffs' counsel, in good faith, served the above named defendants pursuant to 41-12a-505, UCA 1953 as amended.
2. Plaintiffs' counsel interpreted Rule 4 (d) (1) (A) URCP as not requiring prior court approval to serve a designated statutory agent for defendants.

3. On May 18, 2009, this court ruled that prior court approval was necessary to effect service of process on defendants pursuant to 41-12 a-505 UCA 1953 as amended.

4. Rule 4 (d) (4) (A) URCP provides that when the identity or whereabouts of persons are unknown and cannot be ascertained through reasonable diligence, the court may order service by publication or by some other means upon the filing of plaintiffs' supporting affidavits setting forth the efforts made to identify, locate or serve the parties to be served.

5. See attached affidavits of Kelly D. Call and Richard H. Thornley setting forth the efforts made to locate the above-named defendants.

6. Rule 4 (d) (4) (B) provides that if the motion is granted, the court shall order service of process by publication or other means, provided the means of notice is calculated to apprise the interested parties of the pending action to the extent reasonably practicable. The court's order shall also specify the content of the process to be served and the event or events as to when service shall be deemed complete.

Pursuant to the attached affidavits of Kelly D. Call and Richard H. Thornley, plaintiffs request the court for authority to re-serve defendants pursuant to the provisions of 41-12a-505 UCA 1953 as amended, or in the alternative, to serve plaintiffs' summons for three consecutive weeks in the Ogden Standard Examiner, a newspaper of general circulation in the general area of the court's jurisdiction, and published in the English language.

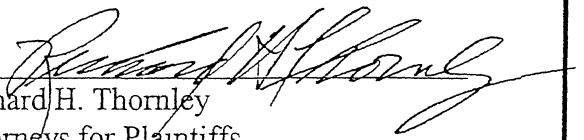
The court, by granting this motion, will secure the just and inexpensive determination of this

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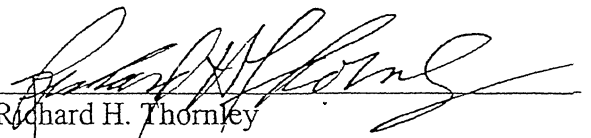
action.

Respectfully Submitted.

PARKER, THORNLEY & CRITCHLOW

By: 
Richard H. Thornley
Attorneys for Plaintiffs

Served a copy of the foregoing Motion this 27th day of May, 2009 by mailing a copy thereof to W. Kevin Tanner, Petersen and Associates, attorneys for defendant Johnnathen Kraft, 230 South 500 East, Suite 400, Salt Lake City, Utah 84102.


Richard H. Thornley

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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
)	
	)	AFFIDAVID OF
Plaintiffs,	)	RICHARD H. THORNLEY
vs.)	
)	
	)	Civil No. 060901726PI
JONATHEN KRAFT, JOSEPH)	
PHALEN and DOES 1 through 15,)	
	)	Judge: Michael D. DiReda
Defendants.)	

STATE OF UTAH)
) ss.
 COUNTY OF WEBER)

Richard H. Thornley, being first duly sworn upon oath deposes and says:

1. I am currently counsel for plaintiffs in the above entitled matter.
2. I was unable to locate defendants Jonathen Kraft and Joseph Phalen at the addresses listed in the police accident report.

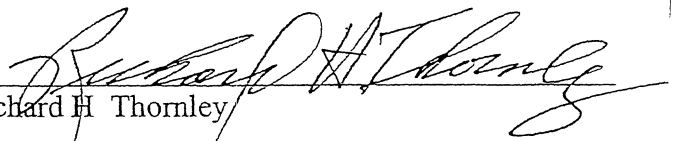
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3. After having a state-wide search by the local telephone company, I was unable to obtain any telephone listings for either individual

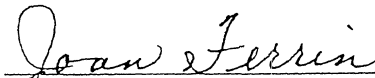
4. I mailed to both defendants by registered letter the documents listed in my Service of Process on the Utah Division of Corporations and Commercial Code and both letters were returned to our law office as being undeliverable.

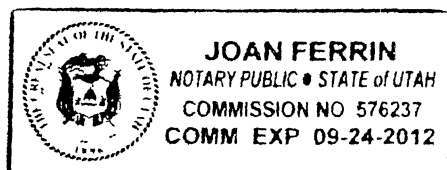
5. I retained Kelly D. Call, dba Insurance Company Support Services and a licensed private investigator, to locate defendants Johnathen Kraft and Joseph Phalen. He was unable to locate either defendant residing within the State of Utah, and the above mentioned registered letters were sent to the last known addresses he was able to obtain for both defendants.

6. See the attached Affidavit of Kelly D. Call for a list of the efforts he made in trying to locate defendants Johnathen Kraft and Joseph Phalen in the State of Utah


Richard H. Thornley

Subscribed and sworn to before me this 27th day of May, 2009


Notary Public



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2610 WASHINGTON BOULEVARD
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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

KAMI WASHINGTON and)	
JOSEPHINE ISHAYA,)	
)	
	)	AFFIDAVID OF KELLY D. CALL
	)	DBA INSURANCE COMPANY
Plaintiffs,	)	SUPPORT SERVICES
vs.)	
	)	Civil No. 060901726PI
JONATHAN KRAFT, JOSEPH)	
PHALEN and DOES 1 through 15,)	
	)	Judge: Michael D. DiReda
Defendants.)	

STATE OF UTAH)
) ss.
COUNTY OF WEBER)

Kelly D. Call, being first duly sworn upon oath deposes and says:

1. I am a license private investigator doing business in Utah as Insurance Company Support Services.
2. I was retained by Richard H. Thornley, on behalf of Kami Washington and Josephine

Ishaya, to locate Johnnathen Kraft and Joseph Phalen.

3. I was provided with a copy of the automobile accident report involving the above named individuals and containing personal information on said individuals.

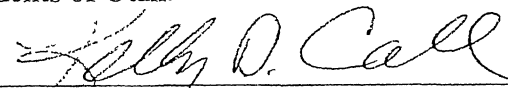
4. In an effort to locate the current whereabouts of Johnnathen Kraft and Joseph Phalen, I accessed the database that collects credit header information, court information, addresses related to the subject individuals, property ownership information, tax information, criminal convictions, judgments and aliases.

5. This database contains information anywhere in the United States when an individual fills out, uses or applies for credit. It also lists the possible dates the individual was living at a particular address.

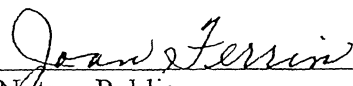
6. Jonathen Kraft's last known address was 5187 South 3175 West, Roy, Utah 84067. Joseph Phalen's last known address was 2915 Madison Avenue, Ogden, Utah 84403.

7. I also checked the local phone directory which showed no current listing for either Johnnathen Kraft or Joseph Phalen.

8. I was unable to locate Jonathen Kraft and/or Joseph Phalen in the State of Utah and I am of the opinion that they are no longer residents of Utah.


Kelly D. Call

Subscribed and sworn to before me this 27th day of May, 2009.



Joan Ferrin
Notary Public



CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of February, 2010, a copy of the foregoing Appellant's Brief was served on the following by hand delivery to:

W. Kevin Tanner
Petersen & Associates
Attorneys for Defendant and Appellee Jonathen Kraft
230 south 500 East
Suite 400
Salt Lake City, Utah 84102


Richard H. Thornley