

1988

Karen Stilling v. Richard L. Skankey, Dba Olympus Hills Mall, and Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John M. Hammond; dba Thomas, Petersen, Hammond & Associates : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

IN THE SUPREME COURT, STATE OF UTAH

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KAREN STILLING, :
Plaintiff, :
v. : Supreme Court No. 880197
RICHARD L. SKANKEY, d/b/a :
OLYMPUS HILLS MALL, : Priority 14(b)
Defendant/Appellant. :
and :
TIMOTHY F. THOMAS; :
WILLIAM F. THOMAS; :
STEPHEN G. PETERSEN; and :
JOHN M. HAMMOND d/b/a :
THOMAS, PETERSEN, :
HAMMOND & ASSOCIATES, :
Defendants/Respondents. :.

---oooOooo---

APPELLANT'S BRIEF

Appeal from the Order of Dismissal of the Third District Court
in and for Salt Lake County, State of Utah
The Honorable Richard H. Moffat presiding

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IN THE SUPREME COURT, STATE OF UTAH

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KAREN STILLING,	:	
Plaintiff,	:	
v.	:	Supreme Court No. 880197
RICHARD L. SKANKEY, d/b/a	:	
OLYMPUS HILLS MALL,	:	Priority 14(b)
Defendant/Appellant.	:	
and	:	
TIMOTHY F. THOMAS;	:	
WILLIAM F. THOMAS;	:	
STEPHEN G. PETERSEN; and	:	
JOHN M. HAMMOND d/b/a	:	
THOMAS, PETERSEN,	:	
HAMMOND & ASSOCIATES,	:	
Defendants/Respondents.	:	

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IN THE SUPREME COURT, STATE OF UTAH

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KAREN STILLING,	:	BRIEF OF APPELLANT
Plaintiff,	:	
v.	:	Supreme Court No. 880197
RICHARD L. SKANKEY, d/b/a	:	
OLYMPUS HILLS MALL,	:	Priority 14(b)
Defendant/Appellant.	:	
and	:	
TIMOTHY F. THOMAS;	:	
WILLIAM F. THOMAS;	:	
STEPHEN G. PETERSEN; and	:	
JOHN M. HAMMOND d/b/a	:	
THOMAS, PETERSEN,	:	
HAMMOND & ASSOCIATES,	:	
Defendants/Respondents.	:	

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PARTIES

The parties are fully identified in the caption of the case.

JURISDICTION

This Court is authorized by Section 78-2-2(3)(i), Utah Code Annotated (1953 as amended), to hear this appeal from the District Court because the Utah Court of Appeals does not have original jurisdiction under Section 78-2a-3, Utah Code Annotated (1953 as amended).

RELATED OR PRIOR APPEALS

There have been no prior appeals in this action; however, this Court is considering the constitutionality of Section 78-12-25.5, Utah Code Annotated (1953 as amended), on certification from the United States District Court for the District of Utah in *Horton, et al., v. Goldminer's Daughter, et al.*, and consolidated actions, in case number 870031.

NATURE OF PROCEEDING

This is an appeal from an Order of the District Court dismissing with prejudice the Crossclaim of Defendant Skankey against co-Defendants Thomas, Peterson and Hammond, d/b/a Thomas Peterson Hammond & Associates. The Order of Dismissal from which this appeal is taken contains, by its terms, a Rule 54 certification of finality.

ISSUES PRESENTED

1. As applied by the District court in this case to Appellant's Crossclaim for indemnity, is Section 78-12-25.5, Utah Code Annotated (1953 as amended), unconstitutional in that it precludes free access to the court in contravention of Article I, Section 11, of the Utah Constitution?
2. In view of the provisions of Section 78-27-41, Utah Code Annotated (1953 as amended 1986), did the trial court err in dismissing Appellant's Crossclaim?

DETERMINATIVE AUTHORITY

Article I, Section 11, Constitution of Utah:

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Section 78-27-41, Utah Code Annotated (1953 as amended 1986):

A person seeking recovery, or any defendant who is a party to the litigation, may join as parties any defendants who may have caused or contributed to the injury or damage for which recovery is sought, for the purpose of having determined their respective proportions of fault.

Section 78-12-25.5, Utah Code Annotated (1953 as amended):¹

No action to recover damages for any injury to property, real or personal, or for any injury to the person, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for damages sustained on account of such injury, shall be brought against any person performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property more than seven years after the completion of such construction.

(1) "Person" shall mean an individual, corporation, partnership, or any other legal entity.

(2) Completion of construction for the purposes of this act shall mean the date of issuance of a certificate of substantial completion by the owner, architect, engineer or

¹This section was amended in 1988 with regard to matters not material to this appeal.

other agents, or the date of the owner's use or possession of the improvement on real property.

The limitation imposed by this provision shall not apply to any person in actual possession and control as owner, tenant or otherwise, of the improvement at the time the defective and unsafe condition of such improvement constitutes the proximate cause of the injury for which it is proposed to bring an action.

This provision shall not be construed as extending or limiting the periods otherwise prescribed by the laws of this state for the bringing of any action.

DISPOSITION IN LOWER COURT

Respondents Thomas, Peterson and Hammond first moved the lower court to dismiss Plaintiff's Amended Complaint on the basis of Section 78-12-25.5, Utah Code Annotated (1953 as amended). (R. at 58.) The Court granted that motion. (R. at 110.) Plaintiff has taken no appeal from the dismissal of her action against Respondents, which was certified as "final" pursuant to Rule 54 (R. at 193, *reproduced infra* at A-22 through A-24). Thereafter, Respondents filed a similar motion, seeking the dismissal of Appellant's Crossclaim for indemnity. (R. at 139.) That motion was also granted (R. at 189) and certified as final (R. at 190, *reproduced infra* at A-19 through A-21) by the District Court. Appellant appeals from that dismissal. (R. at 196.)

STATEMENT OF FACTS

Since the decision under review was pursuant to a Motion to Dismiss, the factual allegations of Appellant's Crossclaim are deemed true. From those allegations, together with matters as to which the parties have

agreed in various Memoranda filed with the lower court, the following facts emerge.

The Plaintiff, an elderly woman, alleges that she was injured on December 29, 1986, in the parking lot of the Olympus Hills Mall in Salt Lake County, Utah, when she "tripped and fell several feet over a retaining wall." (Complaint, R. at 2, at paragraph 5, *reproduced infra* at A-2 through A-6.) Approximately five weeks later, on February 7, 1987, Plaintiff filed suit against Defendant (now Appellant) Richard Skankey, alleging that the "retaining wall" was dangerous. (Complaint, R. at 2.) In November of 1987, Plaintiff filed an Amended Complaint, naming as additional parties defendant Respondents Thomas, Peterson, and Hammond. (Amended Complaint, R. at 30.)

Respondents Thomas, Peterson, and Hammond were the architects and engineers responsible for the planning and design of the construction of the Olympus Hills Mall parking lot at the location at which Plaintiff alleges she was injured. (Crossclaim, R. at 88, at paragraph 1.) Respondents contracted with Appellant to plan and design the parking lot in a safe manner and owed a duty to Appellant as well as the public generally to plan and design the parking lot in a safe manner. (Crossclaim, R. at 88, at paragraphs 3 and 4.) In her Amended Complaint, Plaintiff similarly alleges that her injuries were due to the dangerous condition caused by the negligent failure of Respondents Thomas, Peterson, and Hammond to design and plan the parking lot properly. (Amended Complaint, R. at 30, at paragraph 15.)

The construction of the parking lot in question was substantially completed in November of 1978.

Appellant filed an Answer to Plaintiff's Amended Complaint, and crossclaimed against Respondents Thomas, Peterson, and Hammond, alleging that if the "retaining wall" was dangerous as Plaintiff alleges, then it was as a result of the design created by Respondents Thomas, Peterson, and Hammond. (Answer and Crossclaim, R. at 85, *reproduced infra* at A-13.) Appellant sought both indemnification and a determination pursuant to Section 78-27-41, Utah Code Annotated (1953 as amended 1986), of the proportionate share of fault attributable to Respondents Thomas, Peterson, and Hammond.

SUMMARY OF ARGUMENT

1. By analogy to the reasoning of this Court's ruling in *Berry v. Beech Aircraft, infra*, the statute of repose contained in Section 78-12-25.5, Utah Code Annotated (1953 as amended), is unconstitutional because it violates the "open courts" provisions of Article I, Section 11, of the Constitution of Utah. Moreover, as demonstrated by the facts of this case, application of the statute of repose is unfair because a landowner (such as Appellant) who contracts with an architect to design a safe premises, may incur liability to an injured person (such as the Plaintiff) but be precluded from recovery over against the negligent architect.

2. The dismissal of Appellant's Crossclaim against the allegedly negligent architects was also in contravention of Section 78-27-41, Utah Code Annotated (1953 as amended 1986). That section is a key part of the Tort Reform Act of 1986 and is necessary to effectuate the clearly manifest

purpose of rendering each defendant liable only for those injuries attributable to his, her, or its own fault.

ARGUMENT

POINT I. THE ARCHITECTS' STATUTE OF REPOSE VIOLATES ARTICLE I, SECTION 11, OF THE CONSTITUTION OF UTAH.

The parking lot now alleged to be dangerous was substantially completed in November of 1978. Accordingly, the seven-year statute of repose contained in Section 78-12-25.5, Utah Code Annotated (1953 as amended), cut off any right of action by Appellant as of November, 1985. The Plaintiff does not allege, however, that she was injured until December 29, 1986. Accordingly, Appellant's cause of action for indemnification against the respondent architects for their breach of their agreement and duty to design the parking lot in a safe manner was barred by the statute of repose before it ever arose. Accordingly, Appellant had no opportunity to pursue his cause of action for indemnification.

In 1985, this Court addressed, in *Berry v. Beech Aircraft*, 717 P.2d 670 (Utah 1985), the constitutionality of the very similar statute of repose contained in the Utah Product Liability Act. That statute of repose, like the statute of repose at issue in this action, had operated to bar a cause of action before that cause of action had even arisen. This Court held that the statute of repose was unconstitutional because it violated Article I, Section 11, of the Constitution of Utah. In so holding, this Court reasoned:

The clear language of the section guarantees access to the courts and a judicial procedure that is based on fairness and equality A plain reading of Section 11 also establishes that the framers of the constitution intended that an individual could not be arbitrarily deprived of effective remedies designed to protect basic individual rights. A constitutional guarantee of access to the courthouse was not intended by the founders to be an empty gesture; individuals are also entitled to a remedy by "due course of law" for injuries to "person, property, or reputation."

717 P.2d 675. This Court then went on to articulate and apply a two-prong test to determine whether the statute of repose was constitutional: Was an alternative remedy available and, if not, was abrogation of the cause of action by the statute of repose justified by "a clear social or economic evil"? (717 P.2d at 680).

In the present case, as in *Berry v. Beech Aircraft*, there was no meaningful alternative remedy available and, in the present case, just as in *Berry v. Beech Aircraft*, there is no "clear social or economic evil" requiring the statute of repose. While architectural standards may have changed somewhat since 1978, the Plaintiff, the defendant landowner, and the architect all face the same problem of proof. While those problems may be somewhat greater for the Plaintiff, who has the burden of proof, they are equal as between the defendant landowner and the architect. The cutting off of the landowner's right of indemnification against the allegedly negligent architect furthers no compelling social policy and eliminates no social or economic "evil"; it merely places the defendant landowner in an untenable and inequitable legal quagmire. Significantly, the Utah Legislature did not even attempt to articulate a perceived public necessity for the abolition of causes

of action against architects for injuries occurring more than seven years after the completion of their projects.

The precepts and logic set forth by this Court in its recent decision in *Berry v. Beech Aircraft, supra*, compel the same result with respect to the virtually identical statute of repose at issue in this action. The seven-year architects' statute of repose is unconstitutional under Article I, Section 11, of the Constitution of Utah. The lower court's dismissal of the Crossclaim for indemnification was, accordingly, erroneous.

POINT II. EVEN IF THE STATUTE OF REPOSE IS CONSTITUTIONAL, THE DISMISSAL OF THE CROSSCLAIM FOR INDEMNIFICATION WAS PRECLUDED IN THIS CASE BY SECTION 78-27-41.

The fundamental premise of the Tort Reform Act of 1986 is that each defendant is liable only for that proportion of damages attributable to the fault of that defendant.² The concept of comparative negligence has been retained in that a plaintiff may recover only from a defendant whose

²Section 78-27-40, Utah Code Annotated (1953 as amended 1986), provides:

[T]he maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant

percentage of fault exceeds that of the plaintiff³, but the damage award is no longer calculated by reducing the total damages by the plaintiff's percentage of fault.

Since a plaintiff's judgment against a defendant is now calculated as being that defendant's percentage of fault multiplied by the plaintiff's total damages, it is necessary that *all* of the fault from *all* possible sources be compared in one calculation at one time. The Legislature in drafting the Tort Reform Act of 1986 recognized that *all* fault contributing to an injury would have to be concurrently analyzed by the jury. Section 78-27-41, Utah Code Annotated (1953 as amended 1986), enables analysis of *all* fault contributing to a given injury by providing that:

A person seeking recovery, or any defendant who is a party to the litigation, may join as parties any defendants who may have caused or contributed to the injury or damage for which recovery is sought, for the purpose of having determined their respective proportions of fault.

The facts of the present claim illustrate the necessity of comparing *all* fault at one time as permitted by Section 78-27-41. Assuming *arguendo* that the "retaining wall" over which the Plaintiff tripped constitutes a dangerous condition, fault may lie with the architect (who designed it), the

³Section 78-27-38, Utah Code Annotated (1953 as amended 1986), provides:

The fault of a person seeking recovery shall not alone bar recovery by that person. He may recover from any defendant or group of defendants whose fault exceeds his own. However, no defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributable to that defendant.

landowner (who might have made changes in warnings, railings, or lighting conditions) or the injured person (who might have failed to exercise due care for her own well being)⁴. Hypothetically, the finder of fact could determine that the architect was 80% responsible, the landowner 15% responsible, and the plaintiff 5% responsible. Assuming that the Plaintiff's injuries were determined to be \$10,000.00, the Plaintiff would recover \$8,000.00 from the architect and \$1,500.00 from the landowner.

However, the lower court has dismissed the architect from the lawsuit. Thus, the jury can compare only the fault of the plaintiff and the landowner. Unfortunately, when the jury compares merely the fault of the plaintiff and the landowner, but otherwise reaches the same conclusions, the jury will allocate 75% of the fault to the landowner and 25% to the Plaintiff. The Plaintiff would then recover \$7,500.00 from the landowner. Clearly, this is not the result intended by the Legislature since it results in a recovery by the injured person from the landowner of an amount far in excess of the landowner's actual proportionate share of the damages sustained. The unintended and anomalous result is the result of the trial court's dismissal of the respondent architects in direct violation of the mandate of Section 78-27-41.

It is important to note that the key provision, Section 78-27-41, is not phrased in terms of the original parties having the right to litigate the fault of non-parties, but clearly in terms of the original parties "joining" (*i.e.*, bringing in) additional persons as defendants. This is because of the obvious

⁴There is no allegation, in the present case, that the parking lot was not constructed in accordance with the architect's specifications.

impracticality of the original parties attempting to litigate vicariously the position of non-parties.⁵

By dismissing the respondent architects in violation of the mandate of Section 78-27-41, the trial court has wholly frustrated the fundamental precept of the Tort Reform Act of 1986 -- that each party should be responsible only for his, her, or its own fault.

CONCLUSION

The architects' statute of repose, when applied to the facts of this case, serves to preclude Appellant's cause of action for indemnification before that claim ever arose. Accordingly, particularly in light of this Court's decision with respect to the analogous statute of repose found in the Utah Product Liability Act, the architects' statute of repose is unconstitutional. The lower court erred in dismissing Appellant's Crossclaim for indemnification.

The fundamental precept of the Tort Reform Act of 1986 is that each defendant should be responsible only for that defendant's own fault. Accordingly, it is necessary that *all* of the fault causing a given injury be simultaneously analyzed by the jury. In order to allow the necessary concurrent analysis of all of the fault leading to an injury, the Legislature provided that any party might join as additional defendants any other person

⁵For example, if only the injured person and the landowner were to attempt to litigate the fault attributable to the architect, the injured person would be placed in the wholly anomalous position of having to argue that the architect was without fault (*i.e.*, that the condition about which she complains was not, in fact, dangerous) and the landowner would have to argue that the condition was, in fact, dangerous but was attributable to the architect. Both positions are irreconcilably inconsistent with the natural positions of the Plaintiff and the landowner in the litigation.

"who may have caused or contributed to the injury." The dismissal of Appellant's Crossclaim against the architects was directly contrary to Section 78-27-41 and is erroneous.

The Order of Dismissal entered by the lower court dismissing Appellant's claims against the respondent architects must be reversed and the Crossclaim reinstated.

RESPECTFULLY SUBMITTED this 19th day of September, 1988.

PARKEN & KECK

By



John D. Parken

Counsel for Defendant and
Appellant Richard Skankey d/b/a
Olympus Hills Mall

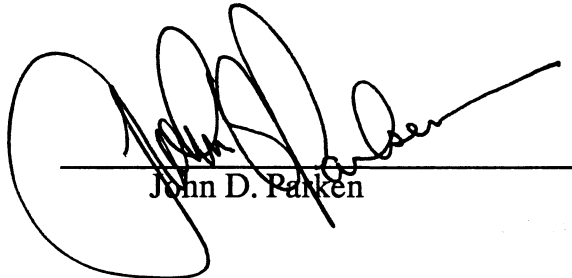
Original signature

MAILING CERTIFICATE

I hereby certify that on the 19th day of September, 1988, I caused four (4) true and correct copies of the foregoing Brief of Appellant to be mailed, postage prepaid, to the following:

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Salt Lake City, Utah

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175 South West Temple Suite 700
Salt Lake City, Utah 84101



John D. Parken

Original Signature

Addendum

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CLERK OF DIST. COURT

BY *[Signature]*
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

KAREN STILLING,

Plaintiff,

vs.

RICHARD L. SKANKEY, d/b/a
Olympus Hills Mall,

Defendant.

ASSIGNED TO:

JUDGE RICHARD H. MOFFAT

COMPLAINT AND JURY DEMAND

Civil No. *C87-1156*

Plaintiff for a cause of action against defendant claims
and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff Karen Stilling is a resident of Twin Falls, Idaho.
2. Defendant Richard L. Skankey is a resident of Salt Lake County, State of Utah and is registered with the Utah Corporations Division as doing business as Olympus Hills Mall.

3. The acts or omissions upon which this action is based occurred in Salt Lake County, State of Utah.

4. On the night of December 29, 1986, the plaintiff was a business invitee at Olympus Hills Mall.

5. On December 29, 1986, plaintiff, while walking in the northern-most parking lot of Olympus Hills Mall, north of the Castletons store, tripped and fell several feet over a retaining wall.

6. As a result of the fall on December 29, 1986, plaintiff suffered and continues to suffer severe personal injuries, including numerous fractures of her left leg, physical and emotional distress.

7. As a result of the severe personal injuries, plaintiff has been required to undergo extensive medical and hospital treatment, which treatment is ongoing and continuing.

FIRST CAUSE OF ACTION

Plaintiff reincorporates her allegations contained in paragraphs 1 through 7 above.

8. The following acts of negligence by the defendant directly and proximately caused plaintiff's damages as herein alleged:

(a) Failure to warn business invitees of a known danger on the land;

(b) Failure to provide railings, barriers or other guarding to prevent injury to business invitees;

(c) Failure to adequately mark, illuminate, or otherwise call to the attention of business invitees in the parking lot of Olympus Hills Mall the dangerous condition of the retaining wall between the parking lot and the roadway below; and

(d) Failure to provide adequate lighting in the parking lot to illuminate the dangerous condition of the retaining wall after dark.

9. Defendant owed a duty to use reasonable care to protect business invitees, such as the plaintiff, from harm resulting from defective and dangerous conditions on the land and the above acts of negligence were a breach of that duty of reasonable care.

SECOND CAUSE OF ACTION

Plaintiff reincorporates her allegations contained in paragraphs 1 through 9 above.

10. Defendant, as owner of Olympus Hills Mall, knew of the dangerous conditions presented by the retaining wall north of the Castleton's store.

11. Defendant knew that the retaining wall presented a high likelihood of serious bodily injury to business invitees.

12. Defendant was given actual notice by business owners and employees in Olympus Hills Mall that the retaining wall in question presented a danger to business invitees without proper railing or barriers.

13. Defendant's action in failing to provide sufficient guarding or barriers, railings or warnings of the retaining wall when defendant was on actual notice of the dangerous condition constitutes willfull, malicious and/or reckless conduct and disregard for the law and the rights of the plaintiff.

14. Plaintiff is entitled to punitive damages as a result of defendant's willful and malicious or reckless behavior.

NOW, WHEREFORE, plaintiff requests a jury trial and prays for judgment in her favor and against defendant as follows:

1. For special damages for the costs of hospital and medical care and treatment;

2. For general damages for pain and suffering, both physical and emotional;

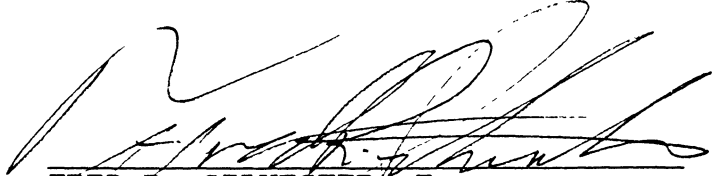
3. For damage for loss of bodily function;

4. For prejudgment interest as allowed by law;

5. For punitive damages in an amount determined by the trier of fact; and

6. For such other and further relief as the Court deems just.

DATED this 7 day of February, 1987.

A handwritten signature in dark ink, appearing to read 'Fred R. Silvester', written over a horizontal line.

FRED R. SILVESTER, Esq.
CHARLES P. SAMPSON, Esq.

of and for
SUITTER AXLAND ARMSTRONG & HANSON
Attorneys for Karen Stilling

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

KAREN STILLING,)	
)	
Plaintiff,)	AMENDED COMPLAINT
)	AND JURY DEMAND
vs.)	
)	
RICHARD L. SKANKEY, d/b/a)	
Olympus Hills Mall; TIMOTHY F.)	
THOMAS, WILLIAM F. THOMAS,)	Civil No. C 87-1156
STEPHEN G. PETERSEN AND JOHN)	
M. HAMMOND, d/b/a THOMAS,)	Judge Richard H. Moffat
PETERSEN, HAMMOND & ASSOC.)	
)	
Defendants.)	

Plaintiff for a cause of action against defendant claims
and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff Karen Stilling is a resident of Twin Falls, Idaho.
2. Defendant Richard L. Skankey is a resident of Salt Lake County, State of Utah and is registered with the Utah Corporations Division as doing business as Olympus Hills Mall.

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3. Timothy F. Thomas, William F. Thomas, Stephen G. Petersen and John M. Hammond are registered as doing business as Thomas Petersen Hammond & Associates ("Thomas Petersen"), which has its principal place of business in Salt Lake County, State of Utah.

4. The acts or omissions upon which this action is based occurred in Salt Lake County, State of Utah.

5. On the night of December 29, 1986, the plaintiff was a business invitee at Olympus Hills Mall ("Mall").

6. That night, while walking in the northern-most parking lot of the Mall, north of the Castletons store, plaintiff tripped over a curb and fell several feet to a driveway below.

7. As a result of the fall, plaintiff has suffered and continues to suffer personal injuries, including numerous fractures of her right leg and physical and emotional distress.

8. As a result of the personal injuries, plaintiff has been required to undergo medical and hospital treatment, which treatment is ongoing and continuing.

FIRST CAUSE OF ACTION

9. Plaintiff incorporates the allegations contained in paragraphs 1 through 8 above as if fully set forth herein.

10. The following acts of negligence by the defendant

Richard Skankey actually and proximately caused plaintiff's damages:

(a) Failure to warn business invitees of a known danger on the land;

(b) Failure to provide railings, barriers or other guarding to prevent injury to business invitees;

(c) Failure to adequately mark, illuminate, or otherwise call to the attention of business invitees in the parking lot of Olympus Hills Mall the dangerous condition of the curb between the parking lot and the driveway below; and

(d) Failure to provide adequate lighting in the parking lot to illuminate the dangerous condition of the retaining wall after dark.

11. Defendant Richard Skankey owed a duty to business invitees, such as the plaintiff, to use reasonable care to prevent harm resulting from defective and dangerous conditions on his land and the above acts of negligence were a breach of that duty of reasonable care.

WHEREFORE, plaintiff prays for damage as set forth below.

SECOND CAUSE OF ACTION

12. Plaintiff incorporates by reference paragraphs 1 through 11 above as if fully set forth herein.

13. Thomas Petersen designed and planned the addition/remodel in which the parking lot northeast of the Castleton's store was constructed.

14. In designing and planning the addition/remodel for the parking lot, Thomas Petersen failed to include adequate barriers, railings or other protections to prevent falls such as that suffered by the plaintiff.

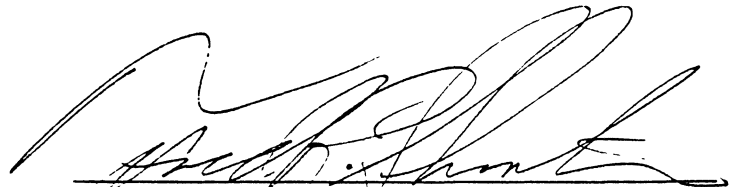
15. As a direct and proximate cause of Thomas Petersen's breach of its duty to use reasonable care in designing and planning the parking lot, plaintiff suffered severe personal injuries and has been required to undergo medical and hospital treatment, which treatment is ongoing and continuing.

NOW, WHEREFORE, plaintiff requests a jury trial and prays for judgment in her favor and against defendants as follows:

1. On plaintiff's First Cause of Action for judgment against Richard Skankey dba Olympus Hills Mall for special damages for the costs of hospital, medical and nursing care and treatment; lost past and future wages and other expenses necessarily incurred by the plaintiff as a result of her injuries; and general damages for pain and suffering, both physical and emotional; damages for loss of bodily function; and for such other and further relief as the Court deem just and equitable under the circumstances.

2. On plaintiff's Second Cause of Action for judgment against Thomas Petersen for special damages for the costs of hospital, medical and nursing care and treatment; lost past and future wages and other expenses necessarily incurred by the plaintiff as a result of her injuries; and general damages for pain and suffering, both physical and emotional; damages for loss of bodily function; and for such other and further relief as the Court deem just and equitable under the circumstances.

DATED this 4 day of Nov~~September~~, 1987.



FRED R. SILVESTER, Esq.
CHARLES P. SAMPSON, Esq.
of and for
SUITTER AXLAND ARMSTRONG & HANSON
Attorneys for Karen Stilling

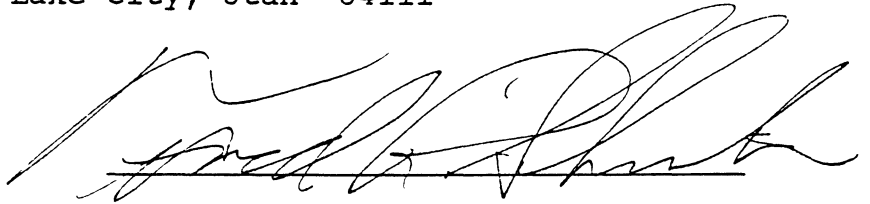
Plaintiff's Address:

1139 Fifth Avenue, East
Twin Falls, Idaho 83301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a I caused a true and correct copy of the above and foregoing Amended Complaint and Jury Demand to be mailed, postage prepaid thereon, this 5 day of ~~September~~^{7/27}, 1987, to:

John D. Parken, Esq.
Marcella L. Keck
PARKEN & KECK
Attorneys for Defendant
Boston Building, Suite #808
#9 Exchange Place
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "John D. Parken", is written over a horizontal line.

CS14.19

John D. Parken (2518)
Marcella L. Keck (4063)
PARKEN & KECK
Attorneys for Defendant
Richard L. Skankey, d/b/a
Olympus Hills Mall
Suite 808 Boston Building
#9 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 596-2920

Katie Goodrich

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

*20⁰⁰
4943* IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
---oooOooo---

KAREN STILLING,	:	ANSWER TO AMENDED
	:	COMPLAINT and CROSS-CLAIM
Plaintiff,	:	
v.	:	Civil No. C87-1156
RICHARD L. SKANKEY, d/b/a	:	
Olympus Hills Mall; TIMOTHY	:	The Honorable Richard H.
F. THOMAS, WILLIAM F. THOMAS,:	:	Moffat
STEPHEN G. PETERSEN and JOHN	:	
M. HAMMOND, d/b/a THOMAS,	:	
PETERSEN, HAMMOND & ASSOC.	:	
Defendant.	:	

---oooOooo---

Defendant Richard L. Skankey, by and through his counsel, John D. Parken, hereby answers Plaintiff's Amended Complaint as follows:

FIRST DEFENSE

Responding to the specific allegations of Plaintiff's Amended Complaint, this Defendant admits, denies, and alleges as follows:

1. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 1 of Plaintiff's Amended Complaint and, therefore, denies the same.

2. This Defendant admits the allegations of paragraphs 2 and 3 of Plaintiff's Amended Complaint.

3. In response to the allegations of paragraph 4 of Plaintiff's Amended Complaint, this Defendant admits that Plaintiff's allegations are alleged to have occurred in Salt Lake County.

4. This Defendant admits the allegations of paragraph 5 of Plaintiff's Amended Complaint.

5. In response to the allegations of paragraph 6 of Plaintiff's Amended Complaint, this Defendant admits that Plaintiff alleges that she tripped, but denies that she fell several feet.

6. Defendant denies the allegations of paragraphs 7 and 8 of Plaintiff's Amended Complaint.

7. In response to paragraph 9 of Plaintiff's Amended Complaint, this Defendant incorporates by reference to Paragraphs 1 through 6 above.

8. This Defendant denies the allegations of paragraph 10 of Plaintiff's Amended Complaint in its entirety.

9. In response to the allegations of paragraph 11 of Plaintiff's Amended Complaint, this Defendant admits that he owed a duty to the public, alleges that he fully and faithfully complied with that duty, and denies any negligence or other breach of any duty.

10. In response to paragraph 12 of Plaintiff's Amended Complaint, this Defendant incorporates by reference to paragraphs 1 through 9 above.

11. This Defendant admits the allegations of paragraph 13 of Plaintiff's Amended Complaint.

12. This Defendant denies the allegations of paragraph 14 of Plaintiff's Amended Complaint. However, Defendant affirmatively alleges that in the event the trier of fact finds any inadequacy in the parking lot as alleged by Plaintiff, Defendants, Timothy F. Thomas, William F. Thomas, Stephen G. Petersen and John M. Hammond, d/b/a Thomas, Petersen, Hammond & Assoc., are responsible as alleged below.

13. This Defendant denies the allegations of paragraph 15 of Plaintiff's Amended Complaint.

14. Except to the extent admitted or qualified in the foregoing responses, this Defendant denies each and every material allegation of Plaintiff's Amended Complaint.

SECOND DEFENSE

The damages and injuries of which Plaintiff complains, if any were caused and contributed to by Plaintiff's own carelessness, inattention, and fault, which was equal to or greater than that, if any of this Defendant.

THIRD DEFENSE

The damages and injuries of which Plaintiff complains, if any were caused and contributed to by the negligence and fault of other persona and entities over whom this Defendant neither exercised nor possessed control or the right of control and any liability of this Defendant should be limited to the pro rata share of the fault attributed to him.

FOURTH DEFENSE

Plaintiff has failed to mitigate her damages and seeks an amount greatly and grossly in excess of her actual damages, if any.

FIFTH DEFENSE

Plaintiff has received, or was entitled to receive, certain first-party insurance benefits, the amount of which must be deducted from any recovery that Plaintiff might otherwise be entitled to receive against this Defendant.

SIXTH DEFENSE

Plaintiff's action against this Defendant is barred and precluded by the applicable statute of limitations and/or statute of repose, including, without limitation, Section 78-12-25.5, Utah Code Annotated (1953 as amended).

WHEREFORE, Defendant Richard L. Skankey respectfully demands that Plaintiff's Amended Complaint be dismissed, no cause of action, and that Plaintiff take nothing thereby but that this Defendant be awarded his costs of court, counsel fees, and such other and further relief as this Court may deem just and equitable under the circumstances and applicable law.

CROSS-CLAIM

Defendant, Richard L. Skankey cross-claims against Defendants Timothy F. Thomas, William F. Thomas, Stephen G. Petersen and John M. Hammond, d/b/a Thomas, Petersen, Hammond & Assoc. (hereinafter "Thomas Petersen") alleging as follows:

1. Defendants Thomas Petersen were the architects and engineers responsible for the planning and design of the construction of the Olympus

Hills Mall parking lot at the location at which Plaintiff alleges she was injured.

2. Defendants Thomas Petersen contracted with this Defendant to plan and design a safe premises.

3. Defendants Thomas Petersen owe a duty to the public generally to plan and design a safe premises.

4. Plaintiff has brought this action for negligence against this Defendant and against Defendants Thomas Petersen for the allegedly unsafe parking lot.

5. This Defendant denies both that he was negligent and that the premises is unsafe but asserts that should it be determined that the premises at issue are in any way inadequate, then the inadequacy results from the negligence of Defendants Thomas Petersen and alleges that the fault lies with Defendants Thomas Petersen.

6. Should judgment be entered against this Defendant, this Defendant is entitled to full and complete indemnification from Defendants Thomas Petersen.

7. Pursuant to Section 78-27-41, Utah Code Annotated (1953 as amended) the fault of Defendants Thomas Petersen should be determined.

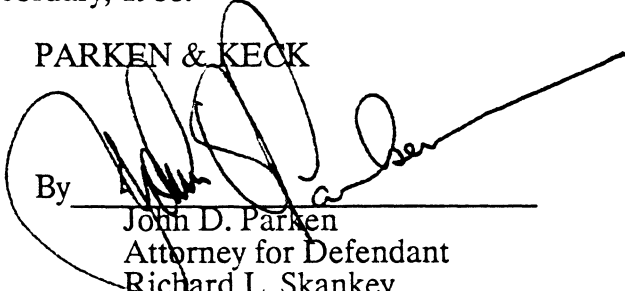
WHEREFORE, Defendant Richard L. Skankey respectfully demands judgment of indemnification against Defendants Thomas Petersen with respect to any liability adjudged against it in this action, together with any costs,

expenses, counsel fees, or losses incurred by this Defendant and such other and further relief as this Court may deem just and equitable.

DATED this 16th day of February, 1988.

PARKEN & KECK

By

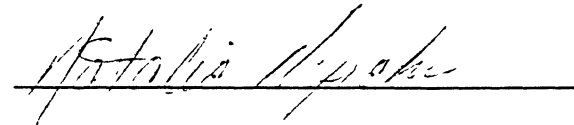

John D. Parken
Attorney for Defendant
Richard L. Skankey

MAILING CERTIFICATE

I hereby certify that on the 16th day of February, 1988, I caused a true and correct copy of the foregoing Answer to Amended Complaint and Cross-Claim to be mailed, postage prepaid to the following:

Fred R. Silvester
Suttor, Axland, Armstrong & Hanson
175 South West Temple Suite 700
Salt Lake City, Utah 84101

Mark Gustavson
630 East South Temple Suite 203
Salt Lake City, Utah 84102



FILED IN CLERK'S OFFICE
Salt Lake County, Utah

APR 25 1988

Mark S. Gustavson, (1278)
Charles A. Schultz, (4760)
GUSTAVSON, HALL & WILLIAMS
Attorneys for Defendant
630 East South Temple
Salt Lake City, Utah 84102
Telephone (801) 533-8361

H. Dixon Hindley, Clerk 3rd Dist. Court
By R. Thomas
Deputy Clerk

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

KAREN STILLING,
Plaintiff,

ORDER OF DISMISSAL AND
FINAL JUDGMENT

vs.

Civil No. C87-1156

RICHARD L. SKANKEY, d/b/a
OLYMPUS HILLS MALL; TIMOTHY F.
THOMAS, WILLIAM F. THOMAS,
STEPHEN G. PETERSEN and JOHN
M. HAMMOND, d/b/a THOMAS,
PETERSEN, HAMMOND & ASSOCIATES,

(Judge: Richard H. Moffat)

Defendants.

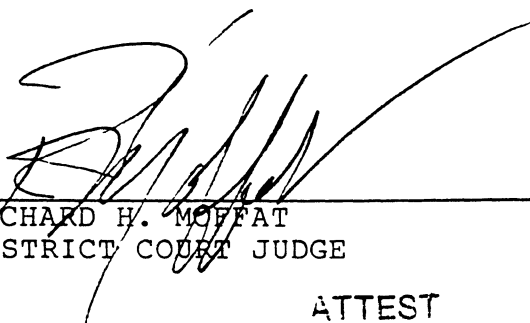
Defendants' Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a Thomas, Petersen, Hammond and Associates, Motion to Dismiss Co-Defendants' Richard L. Skankey, d/b/a Olympus Hills Mall Cross-claim, came on for regularly scheduled hearing before the Honorable Judge Richard H. Moffat, on April 8, 1988, at the hour of 9:00 a.m. The Court, having reviewed the file in this matter, having read and reviewed the memoranda filed by the respective parties to this action, having heard and considered the oral arguments of counsel, and now being fully advised as to the relevant facts and the applicable law,

hereby grants Defendants' Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a Thomas, Petersen, Hammond and Associates, Motion to Dismiss Co-Defendants' Richard L. Skankey, d/b/a Olympus Hills Mall Cross-claim with prejudice.

Pursuant to Rule 54 of the Utah Rules of Civil Procedure this, and acting upon the request of parties to this action, this Court herein certifies this Order of Dismissal to be Final Judgment, finding there to be no reason for delay of an entry of a Final Judgment upon the Motion of Defendants' Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a Thomas, Petersen, Hammond and Associates, to Dismiss the Cross-claim of Richard L. Skankey, d/b/a Olympus Hills Mall.

Dated this 25 day of April, 1988.

BY THE COURT:



RICHARD H. MOFFAT
DISTRICT COURT JUDGE


ATTEST
H. DIXON HINDLEY
CLERK
By K. Grotz
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 1988, I served a true and correct copy of the foregoing Proposed Order of Dismissal and Final Judgment to the persons at the addresses listed below by depositing a copy in the United States Mail, postage prepaid.

John D. Parken
Marcella L. Keck
Suite 808 Boston Building
No. 9 Exchange Place
Salt Lake City, Utah 84111

Fred R. Silvester
Charles P. Sampson
SUITTER AXLAND ARMSTRONG & HANSON
700 Leaming Clark Office Center
175 South West Temple
Salt Lake City, Utah 84101-1480



Mark S. Gustavson
Charles A. Schultz
Attorney for Defendants
Timothy F. Thomas,
William F. Thomas,
Stephen G. Petersen, and
John Hammond, d/b/a
Thomas, Petersen, Hammond
and Associates

FILED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

MAY 2 1988

Mark S. Gustavson, (1278)
Charles A. Schultz, (4760)
GUSTAVSON, HALL & WILLIAMS
Attorneys for Defendant
630 East South Temple
Salt Lake City, Utah 84102
Telephone (801) 533-8361

H. Dixon Hurdley, Clerk 3rd Dist. Court
By R. Gustavson
Clerk

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

KAREN STILLING,)	
)	AMENDED ORDER OF DISMISSAL
Plaintiff,)	AND FINAL JUDGMENT
)	
vs.)	
)	Civil No. C87-1156
RICHARD L. SKANKEY, d/b/a)	
OLYMPUS HILLS MALL; TIMOTHY F.)	
THOMAS, WILLIAM F. THOMAS,)	(Judge: Richard H. Moffat)
STEPHEN G. PETERSEN and JOHN)	
M. HAMMOND, d/b/a THOMAS,)	
PETERSEN, HAMMOND & ASSOCIATES,)	
)	
Defendants.)	

Defendants' Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a Thomas, Petersen, Hammond and Associates, Motion to Dismiss the Complaint of Karen Stilling, came on for regularly scheduled hearing before the Honorable Judge Richard H. Moffat, on February 19, 1988, at the hour of 9:00 a.m. All parties were represented at the hearing by their respective counsel of record.


The Court, having reviewed the file in this matter, having read and reviewed the memoranda filed by the respective parties to this action, having heard and considered the oral arguments of counsel, and now being fully advised as to the relevant facts and the applicable law, hereby grants Defendants' Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a

Thomas, Petersen, Hammond and Associates, Motion to Dismiss Plaintiff Karen Stilling's Complaint, as against Defendants Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a Thomas, Petersen, Hammond and Associates with prejudice.

Pursuant to Rule 54 of the Utah Rules of Civil Procedure and acting upon the request of parties to this action, this Court herein certifies this Order of Dismissal to be Final Judgment, finding there to be no reason for delay of an entry of a Final Judgment upon the Motion of Defendants' Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a Thomas, Petersen, Hammond and Associates, to Dismiss the Complaint of Karen Stilling as to Defendants Timothy F. Thomas, William F. Thomas, Stephen G. Petersen, and John Hammond, d/b/a Thomas, Petersen, Hammond and Associates.

Dated this 25 day of April, 1988.

BY THE COURT:



RICHARD H. MOFFAT
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
CLERK


By K. Grotzner
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 1988, I served a true and correct copy of the foregoing Proposed Amended Order of Dismissal and Final Judgment to the persons at the addresses listed below by depositing a copy in the United States Mail, postage prepaid.

John D. Parken
Marcella L. Keck
Suite 808 Boston Building
No. 9 Exchange Place
Salt Lake City, Utah 84111

Fred R. Silvester
Charles P. Sampson
SUITTER AXLAND ARMSTRONG & HANSON
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101-1480



Mark S. Gustavson
Charles A. Schultz
Attorney for Defendants
Timothy F. Thomas,
William F. Thomas,
Stephen G. Petersen, and
John Hammond, d/b/a
Thomas, Petersen, Hammond