

2000

# Great West Casualty Company v. Utah Department of Transportation : Brief of Appellant

Utah Court of Appeals

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**GREAT WEST CASUALTY  
COMPANY,**

**UTAH DEPARTMENT OF  
TRANSPORTATION,**

**Priority No. 15**

**Julia D'Alesandro**  
**Clerk of the Court**

**IN THE UTAH COURT OF APPEALS**

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**GREAT WEST CASUALTY  
COMPANY,**

**Plaintiff/Appellant,**

**UTAH DEPARTMENT OF  
TRANSPORTATION,**

**Respondent/Appellee.**

**Case No. 20000010-CA**

**Priority No. 15**

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL  
DISTRICT COURT, THE HONORABLE TYRONE E. MEDLEY,  
PRESIDING**

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## **JURISDICTION OF THE UTAH COURT OF APPEALS**

Jurisdiction in this matter is proper in the Utah Court of Appeals pursuant to Utah Code Ann. § 78-2-2(4).

## **STATEMENT OF THE ISSUES AND STANDARD OF REVIEW**

Issue. Was the timely Notice of Claim submitted by Lloyd Morris legally sufficient to notify the Utah Department of Transportation (“UDOT”) of Great West Casualty Company’s (“Great West”) claim and to overcome summary judgment?

Standard of Review: Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c); Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1039 (Utah 1991); Hamblin v. City of Clearfield, 795 P.2d 1133, 1135 (Utah 1990). In determining whether the trial court properly granted judgment as a matter of law, the reviewing court accords the trial court’s legal conclusions no particular deference but reviews them for correctness. Clover, 808 P.2d at 1040; Hamblin, 795 P.2d at 1135. The reviewing court views the facts and inferences in a light most favorable to the non-moving party. Parker v. Dogion, 971 P.2d 496, 496-97 (Utah 1998).

## **DETERMINATIVE STATUTES**

The Utah Governmental Immunity Act, Utah Code Ann. § 63-30-1, et. seq.

## **STATEMENT OF THE CASE**

### **Nature of the Case and Course of Proceedings**

Plaintiffs, Lloyd Morris, Judy Morris and Great West brought an action against the UDOT for personal injury and property damage after a semi-tractor, driven by Lloyd Morris, struck a cow on eastbound I-80. Plaintiffs alleged UDOT negligently caused the accident. Plaintiffs Lloyd Morris and Judy Morris fully settled and compromised their claims for bodily injury against UDOT. Plaintiffs Lloyd Morris and Judy Morris' claims against UDOT were dismissed with prejudice and upon the merits. Plaintiff Great West's claim for property damage remained.

UDOT moved for summary judgment against Plaintiff Great West arguing that Great West failed to file a timely notice. Great West opposed UDOT's motion on the basis that the notice of claim filed by Plaintiff Lloyd Morris was legally sufficient to notify UDOT of Great West's property damage claim.

On or about November 18, 1999, the Honorable Tyrone E. Medley of the Third Judicial District Court granted UDOT's summary judgment. On December 3, 1999, Judge Medley signed the Order granting summary judgment against Plaintiff Great West.

### **Statement of Facts**

1. On or about October 20, 1997, a Freightliner semi-tractor driven by Plaintiff Lloyd Morris and insured by Great West was damaged when it struck a cow on eastbound Highway I-80 and rolled.

2. On or about May 13, 1998, pursuant to Utah Code Ann. §63-30-1 et seq., Plaintiffs Lloyd Morris and Judy Morris filed (served) their statutory Notices of Claim against UDOT. Plaintiff Lloyd Morris alleged among other things extensive property damage to the semi-tractor.

3. On February 10, 1999, Plaintiffs Lloyd Morris and Judy Morris filed an action against UDOT.

4. On March 17, 1999, Plaintiffs Lloyd Morris and Judy Morris filed an Amended Complaint pursuant to a stipulation with UDOT adding Plaintiff Great West and its claim for property damage.

5. On or about October 8, 1999, UDOT filed a Motion for Summary Judgment against Plaintiff Great West, arguing that Great West failed to file a proper Notice of Claim in that the claim was filed by Lloyd Morris who was not the real party in interest.

6. On October 18, 1999, Plaintiff Great West filed its Memorandum in Opposition to Defendant's Motion for Summary Judgment.

7. On or about November 18, 1999, the Honorable Tyrone E. Medley granted UDOT's Motion for Summary Judgment.

8. On or about December 3, 1999, the Honorable Tyrone E. Medley signed the Order granting Defendant's Motion for Summary Judgment.

### **SUMMARY OF APPELLANT'S ARGUMENT**

The timely notice of claim submitted by Plaintiff Lloyd Morris was legally



sufficient to notify UDOT of Great West's claim for property damage. Plaintiff Lloyd Morris timely filed the notice, set forth the facts and nature of the claim, and stated the amounts for property damage, thus fulfilling the underlying purpose of the notice of claim requirement.

Plaintiff Lloyd Morris was at all times the agent of Great West. Plaintiff Lloyd Morris made a claim for property damage for Great West, the real party in interest.

### **ARGUMENT**

#### **I. THE NOTICE OF CLAIM SUBMITTED BY LLOYD MORRIS WAS SUFFICIENT TO NOTIFY THE UTAH DEPARTMENT OF TRANSPORTATION OF GREAT WEST CASUALTY COMPANY'S CLAIM.**

The timely notice of claim submitted by Plaintiff Lloyd Morris was legally sufficient to notify Appellee and Defendant, the Utah Department of Transportation ("UDOT") of Plaintiff and Appellant Great West Casualty Company's ("Great West") claim. Accordingly, the trial court erred in granting UDOT summary judgment against Great West.

Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c); Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1039 (Utah 1991); Hamblin v. City of Clearfield, 795 P.2d 1133, 1135 (Utah 1990). In determining whether the trial court properly granted judgment as a matter of law, the reviewing court accords the trial court's

legal conclusions no particular deference but reviews them for correctness. Clover, 808 P.2d at 1040; Hamblin, 795 P.2d at 1135. The reviewing court views the facts and inferences in a light most favorable to the non-moving party. Parker v. Dogion, 971 P.2d 496, 496-97 (Utah 1998).

UDOT contends that Great West failed to file a timely notice of claim because Plaintiff Lloyd Morris was not statutorily authorized to assert a claim in which he had no interest; and the notice of claim was not signed by Great West's lawyer. UDOT'S argument is without merit.

Section 63-30-12 of the Utah Governmental Immunity Act provides in part:

A claim against the state, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general within one year after the claim arises.

Utah Code Ann. § 63-30-12.

In Moreno v. Bd. of Educ. of Jordan School Dist., 926 P.2d 886 (Utah 1996), the Utah Supreme Court addressed the issue of whether a guardian's notice of claim satisfied the natural mother's notice requirement's under the Act. Moreno, 926 P.2d at 891. In Moreno, Mr. and Mrs. Moreno were the foster parents of Bill Bartlett, a minor, and had been awarded permanent custody and guardianship of the child. The natural mother of the child, Laura Bartlett's parental rights had not been terminated.

In June 1992, the child died in a swimming pool owned and operated by Jordan

School District. In December 1992, the Morenos filed a notice of claim with the school district alleging the negligence of the school district proximately cause the child's death and that as the child's legal and exclusive guardians, they were entitled to recover damages for the wrongful death of the child. The Moreno's notice of claim did not name or mention the child's natural mother, Laura Bartlett.

In September 1993, the State denied the Moreno's claim citing that the Morenos were not the real party in interest. The Morenos then filed a lawsuit against the school district, again not naming or joining the child's natural mother, Laura Bartlett, in the complaint. Bartlett sought to intervene in the action arguing that she was the real party in interest and the Morenos were not. The school district opposed Bartlett's motion arguing her claim was time barred because she had failed to file a timely notice of claim pursuant to the Utah Governmental Immunity Act.

The trial court denied Bartlett's motion to intervene on the basis that the Morenos, not Bartlett, were the real party in interest in the wrongful death action. Bartlett appealed.

Moreno reversed the trial court and held that Bartlett, not the Morenos was the real party in interest. Moreno, 926 P.2d at 892. The Court in Moreno adopted Justice Howe's concurring opinion and further held that the notice of claim filed by the Morenos was legally sufficient to notify the school district of Bartlett's claim. Id.

Moreno provided that the purpose of a notice of claim is simply to give timely notice, allowing the state to conduct an investigation. Id. (Howe, J. concurring). The

Court reasoned that the Morenos had fulfilled that purpose by timely filing their notice, stating the facts and the nature of the claim, and stating amounts for damages to the extent they were known. Id. Moreno concluded that the school district could show no prejudice merely because the claim was filed by the Morenos in their own behalf rather than in a representative capacity for Bartlett. Id.

In the present case, on or about October 20, 1997, Lloyd Morris was driving a semi-tractor owned by M&P Transportation (“M&P”) and insured by Great West. While driving the semi-tractor eastbound on I-80 Lloyd Morris struck a cow resulting in personal injury to both he and his wife Judy Morris and property damage to the semi-tractor. Following the incident, Great West paid M&P’s claim for property damage to the semi-tractor. Great West then asserted its subrogation claim against UDOT for reimbursement of the approximately \$48,000 paid on the property damage claim.

On or about May 13, 1998, Lloyd Morris served his statutory notice of claim alleging that UDOT’s negligence resulted in personal injury as well as extensive property damage to the semi-tractor. On or about September 23, 1998, Great West retained Lloyd and Judy Morris’ attorneys to pursue its property damage claim. Lloyd and Judy Morris filed an action against UDOT and later amended their complaint adding Great West and its property damage claim.

While Lloyd Morris was not the real party in interest with regard to the property damage claim, he fulfilled the underlying purpose of the notice of claim requirement. He

timely filed the notice, set forth the facts and the nature of the claim, and stated the amounts for damages, including damage to the semi-tractor. Great West's claim for property damage resulting from UDOT's negligence grows out of the same set of facts and circumstances as does Lloyd Morris' claim. UDOT can claim no prejudice by Lloyd Morris rather than Great West filing the notice for property damage. UDOT was given timely notice of both injury and property damage claims and allowed to conduct its investigation.

UDOT also sought to distinguish Moreno from the case at bar because the Morenos were statutorially authorized to bring a wrongful death action, albeit on behalf of the heirs, as opposed to themselves. See Utah Code Ann. § 78-11-6. This is a distinction without a difference.

Lloyd Morris, at all times was the agent of M&P. As M&P's insurance carrier for property damage, Great West maintained its subrogation interest. As in Moreno, Lloyd Morris was not the real party in interest. M&P and Great West can only act through their agents and thus Lloyd Morris could assert the claim for M&P and/or Great West. In Moreno, the guardians failed to make the claim for Bartlett. Here, Lloyd Morris made a claim for the property damage to the semi-tractor, yet he failed to make the claim for M&P or Great West which were the real parties in interest. There is no distinction.

UDOT further relies on Scarborough v. Granite School District, 531 P.2d 480 (Utah 1975) and Rushton v. Salt Lake County, 977 P.2d 1201 (Utah 1999) for the

proposition that there can be no deviation from the strict requirements of section 63-30-11 of the Utah Code. Each of these cases denied a plaintiff relief because of their failure to meet any of the notice requirements. In Scarborough, the plaintiff had a conversation with a school principal but filed no claim. In Rushton, the plaintiff wrote a letter to the County Commission requesting that the County issue a quit claim deed to the Rushtons for property formerly owned by them which had erroneously been transferred to the County.

In denying relief to the Rushtons, the Court noted that the letters written by the Rushtons failed to express “an intent to file suit against the County or to resort to legal action if the matter was not resolved.” Id. at 1202. Rushton went on to state that “Such a request is not sufficient to state the nature of the claim asserted to put the County on notice that a claim is being asserted against it.” Id. Rushton held the plaintiff failed to comply with the notice requirements of section 63-30-11(2) of the Utah Code. Id.

This is not true in the case at bar. The notice of Lloyd Morris clearly delineates it as a notice of claim pursuant to Utah Code Ann. § 63-30-11. It sets forth UDOT’s alleged delicts and it claims damage to the semi-tractor in the sum of \$48,000. Rushton states:

A notice of claim provides the entity being sued with the factual details of the incident that led to the plaintiff’s claim. Moreover, it “provide[s] the governmental entity an opportunity to correct the condition that caused the injury, evaluate the claim, and perhaps settle the matter without the expense of litigation.”

Rushton, 977 P.2d at 1202 (citing Larson v. Park City Mun. Corp., 953 P.2d 343, 345-46 (Utah 1998)).

In the present case, UDOT cannot and does not contend it did not receive notice that Morris was injured and the truck was damaged. UDOT, through this notice, had sufficient information to correct the condition; evaluate the claim; and seek to avoid litigation through settlement. The State can show no prejudice merely because the claim was filed by Morris on his own behalf rather than in a representative capacity for M&P or Great West.

### **CONCLUSION**

The notice of claim provided by Lloyd Morris was legally sufficient to notify UDOT of Great West's claim for property damage. Furthermore, genuine issues of material fact remain as Great West's claim of negligence against UDOT. To that end, UDOT is not entitled to judgment as a matter of law.

Plaintiff and Appellant, Great West Casualty Company, respectfully requests that this Court reverse the ruling of the trial court granting UDOT summary judgment and remand this matter for further proceedings.

Dated this 29<sup>th</sup> day of March, 2000

**MICHAEL F. RICHMAN & ASSOCIATES**

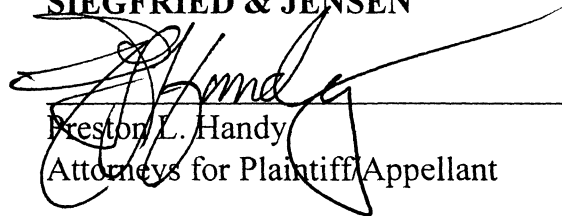


Michael F. Richman

Attorneys for Plaintiff/Appellant

Dated this 9 day of March, 2000

**SIEGFRIED & JENSEN**

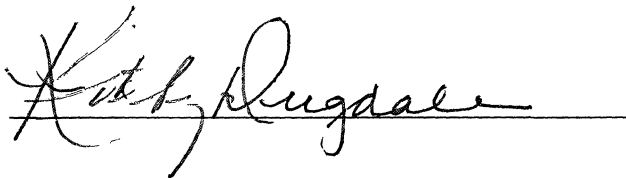
  
\_\_\_\_\_  
Preston L. Handy  
Attorneys for Plaintiff/Appellant



**CERTIFICATE OF MAILING**

I hereby certify that on this 30<sup>th</sup> day of March, 2000, I caused to be hand-delivered a true and correct copy of the foregoing document entitled **BRIEF OF APPELLANT** to:

Reed Stringham  
Assistant Attorney General  
State of Utah  
160 East 300 South  
Post Office Box 140856  
Salt Lake City, Utah 84114-0856

A handwritten signature in cursive script, reading "Kirby Rugdale", is written over a horizontal line.

**ADDENDUM**  
**of Relevant Statutes:**

**Utah R. Civ. P. 56(c)**

**Rule 56. Summary Judgment.**

**(c) Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

**Utah Code Ann. § 60-30-11 (1999).**

**Claim for injury - Notice - Contents - Service - Legal disability.**

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

- (i) a brief statement of the facts;
- (ii) the nature of the claim asserted; and
- (iii) the damages incurred by the claimant so far as they are known.

(b) The notice of claim shall be:

- (i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and
- (ii) directed and delivered to:
  - (A) the city or town recorder, when the claim is against an incorporated city or town;
  - (B) the county clerk, when the claim is against a county;
  - (C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;
  - (D) the president or secretary of the board, when the claim is

- against a special district;
  - (E) the attorney general, when the claim is against the State of Utah; or
  - (F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body.
- (4) (a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.
- (b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.
  - (ii) The court may not grant an extension that exceeds the applicable statute of limitations.
- (c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

**Utah Code Ann. § 60-30-12 (1999).**

**Claim against state or its employee - Time for filing notice.**

A claim against the state, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.