

2008

# Wendy Gudmundson, Kay Gudmundson v. Del Ozone, Ozonesolutions, L.C. Johnson Controls, Inc., John and Jane Does 1-10 : Reply Brief of Amicu Curiae

Utah Supreme Court

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**IN THE SUPREME COURT OF THE STATE OF UTAH**

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WENDY GUDMUNDSON and KAY  
GUDMUNDSON,

Plaintiffs and Appellants,

vs.

DEL OZONE, OZONESOLUTIONS,  
L.C., JOHNSON CONTROLS, INC.,  
and JOHN and JANE DOES 1-10,

Defendants and Appellees.

Supreme Court Case No. 20080537  
Trial Court Case No. 050916518

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**TABLE OF AUTHORITIES**

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## ARGUMENT

UAJ argued that issue preclusion should not apply to worker's compensation decisions based on a number of exceptions to the general rule of res judicata. UAJ's opening brief did a very nice job of explaining in a simple and persuasive way why each of these exceptions should apply to workers' compensation decisions.

The only appellee to address these exceptions was Ozonesolutions, L.C. *See* Brief of Appellee Ozonesolutions, L.C. pages 27-36. Ozonesolutions attempts to muddy and convolute the plain and easily understandable policies supporting the exceptions to res judicata. As to one of the exceptions, however, it goes too far in mischaracterizing UAJ's position and a response is necessary.

UAJ pointed out that an exception to the general rule of res judicata exists when differences in procedures available in different forums could result in different outcomes. In support of its position, UAJ quoted the following from the Restatement (Second) Judgments: "Preclusion may be withheld when the party against whom it is invoked can avail himself of procedures in the second action that were not available to him in the first action and that may have been significantly influential in determination of the issue. Differences in this regard include such procedures as discovery devices." Restatement (Second) Judgments § 29 cmt. d.


UAJ then pointed out a number of procedural differences in civil cases versus workers' compensation proceedings. A particularly important difference rests in the inability to cross examine medical experts in workers' compensation proceedings. These differences led other state courts to refuse to apply issue preclusion to workers' compensation proceedings.

In response, Ozonesolutions mischaracterizes UAJ's argument by stating, "Appellants' argument that application of collateral estoppel would cause different results makes absolutely no sense." Even a cursory review of UAJ's brief would show that UAJ argued that application of different procedures available in civil litigation that aren't available in workers' compensation proceedings could cause different results in the outcomes. UAJ would agree with Ozonesolutions that an argument that application of collateral estoppel would cause different results makes absolutely no sense.

### **CONCLUSION**

Issue preclusion should not apply to worker's compensation decisions based on a number of exceptions to the general rule of res judicata.

Dated January 13, 2008.

  
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Brent Gordon  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2008, I mailed two true and correct copies of the foregoing to the following:

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