

2010

Workers Compensation Fund and Iverson Steel and Erection Company v. Wadman Corporation and Argonaut Insurance Company : Reply Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

WORKERS COMPENSATION FUND
and IVERSON STEEL AND ERECTION
COMPANY

Plaintiffs/Appellees,

vs.

WADMAN CORPORATION,

Defendant¹
and

ARGONAUT INSURANCE COMPANY,

Defendant/Appellant

Supreme Court No. 20100211-SC

Trial Court No. 020903830

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¹Since WCF's Memorandum at R. 1563, WCF has listed Wadman Corp. as a Plaintiff in this case. This caption more accurately reflects the relationship of the parties as found in the pleadings filed in the trial court.

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ARGUMENT

I. THE TRIAL COURT'S ENTRY OF JUDGMENT WITHOUT A HEARING ON DAMAGES VIOLATED ARGONAUT'S DUE PROCESS RIGHTS

This case revolves around the payment of workers' compensation benefits to an injured employee. However, the party found liable to pay the benefits has been deprived of every substantive and procedural right given it to ensure that the benefits due are reasonable and necessary. First, the Labor Commission has exclusive jurisdiction to determine workers' compensation benefits. The trial court was to consider only coverage issues. Also, Argonaut's due process rights guaranteed by the Utah² and United States Constitutions³ were violated. Because the trial court refused to hold a hearing to determine damages, Argonaut was deprived of its property unlawfully. The trial court accepted WCF's bald assertions of damages. The actions of the trial court constitute an egregious and obvious violation of Argonaut's due process rights.

A. The Labor Commission has Exclusive Jurisdiction

Utah Code Ann. § 34A-2-407(11)(a) (West 2002) provides that "the commission has exclusive jurisdiction to hear and determine whether the treatment or services rendered to employees by physicians, surgeons, or other health providers are: (i) reasonably related to industrial injuries ... and (ii) compensable pursuant to this chapter"

The statute speaks for itself.

²See Utah Constitution Article I § 7.

³See U.S. Constitution Amendment XIV § 1.

B. Due Process Requires a Hearing Before an Individual is Deprived of a Property Interest

The United States Supreme Court “consistently has held that some form of hearing is required before an individual is finally deprived of a property interest.”⁴ Argonaut was not given any form of hearing and was not provided an opportunity to be heard at a meaningful time or in a meaningful manner.⁵ The trial court abused its discretion when it entered judgment without a hearing. The trial court finally deprived Argonaut of a property interest without allowing Argonaut any opportunity to defend itself.

On remand, the trial court was to enter an opinion consistent with *Workers’ Compensation Fund v. Wadman Corp*, 2009 UT 18, 210 P.3d 277.⁶ In *Wadman*, this Court found that Wadman Corporation (“Wadman Corp.”) was the statutory employer of Mr. Searle.⁷ On remand, the proper action for the trial court would be to enter declaratory judgment identifying Wadman Corp. as the statutory employer, and then transfer the case to the Labor Commission to determine the benefits due to Mr. Searle. The trial court mentioned

⁴*Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). *See also Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974), *Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589, 596-597 (1931)

⁵*See Eldridge*, 424 U.S. at 333 (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner” (internal citations omitted)).

⁶*See* R. 1313

⁷*Id.*

this in its judgment,⁸ but failed to transfer the case. At the very least, the trial court should have held a hearing to determine the amount of damages.

Because the trial court did not transfer the case to the Labor Commission or hold a hearing on damages, Argonaut was deprived of its property interest without due process of law. The trial court entered judgment based on cursory computer printouts without any foundation or authentication.⁹ Rule 901 of the Utah Rules of Evidence requires that evidence be properly authenticated and identified before it is admitted into evidence.¹⁰ The trial court erroneously based its judgment on evidence that had not been properly authenticated in direct violation of this rule. Argonaut was never provided an opportunity to conduct discovery relating to damages, cross-examine any witnesses, or defend itself in any way with regards to WCF's claim to damages. The trial court simply accepted WCF's claim of damages and did not require it to meet any burden of proof or evidentiary requirements. The trial court's actions were error.

C. The Trial Court Never Received Supporting Documentation for WCF's Claim for Damages

WCF claims that Argonaut's due process rights were not violated because WCF sent Argonaut a copy of the proposed judgment with a "disc containing all the necessary

⁸R. 1481.

⁹R. 1514 and 1518.

¹⁰See Utah Rules of Evidence 901(a) and *State v. Horton*, 848 P.2d 708, 714 (Utah App. 1993).

foundational documents to support the amount of damages”¹¹ WCF also claims that Argonaut has mislead the Court.¹² WCF claims Argonaut has mislead the court by creating an “inference” that Argonaut did not receive the “foundational documents.”¹³ Whether Argonaut received such documents is irrelevant. What is relevant is the fact that this documentation was never given to the trial court. Argonaut’s position is that it was prejudiced because these documents were never presented to the trial court. Argonaut cannot control the “inferences” that WCF will make from its statements and a Rule 11(h) motion cannot be granted to correct inferences. The trial court never considered these documents so this Court cannot consider them when determining if the trial court abused its discretion. Appellate Courts may “weigh only those facts and legal arguments preserved ... in the trial court record.”¹⁴ These “foundational documents” were never authenticated, never presented to the trial court, and were never part of the trial court’s record.

WCF also claims Argonaut is seeking to impose a duty on the trial court to “unilaterally raise issues.”¹⁵ The trial court has a duty to follow the Rules of Evidence¹⁶ and

¹¹WCF’s Response Brief, pp. 30-31.

¹²*Id.*

¹³See WCF’s Reply In Support of Plaintiffs’ Appellees’ Rule 11(h) Petition, pp. 2-3.

¹⁴See *Olson v. Park-Craig-Olson, Inc.*, 815 P.2d 1356, 1359 (Utah App. 1991).

¹⁵WCF’s Reply In Support of Plaintiffs’ Appellees’ Rule 11(h) Petition, p. 7.

¹⁶Rule 101 of the Utah Rules of Evidence states “[t]hese rules govern proceedings in the courts of this State.” The Advisory Committee Note also states that “Rule 101 adopts a general policy making the Rules of Evidence applicable in *all* instances in courts of the state

require that evidence in support of a judgment be properly authenticated.¹⁷ The trial court failed to follow the Rules of Evidence and entered a judgment with no evidence to support it. Argonaut's due process rights were violated because there was no evidence properly presented to the trial court to support the judgment and because Argonaut was never given an opportunity to rebut the evidence before the trial court.

WCF has sought to supplement the record on appeal through a motion based on Rule 11(h) of the Utah Rules of Appellate Procedure¹⁸ Through this motion it seeks to add these "foundational documents" into the record on appeal. This motion should not be granted and this Court cannot consider these documents.¹⁹ Rule 11(h) does not permit the introduction of new evidence into the record.²⁰ The record on appeal without the "foundational documents" accurately reflects the "original papers and exhibits filed in the trial court."²¹ The record should not be supplemented as there is no error or omission in the record. The trial court entered judgment without any proper evidence of damages. Again, the only support

...." (emphasis added).

¹⁷See Rule 901 of the Utah Rules of Evidence.

¹⁸See WCF's Rule 11(h) Petition to Modify and Supplement the Record on Appeal.

¹⁹For a more complete discussion on the improper nature of WCF's Rule 11(h) motions, see Argonaut's Objection to Plaintiffs'/Appellees' Rule 11(h) Petition to Modify and Supplement the Record on Appeal.

²⁰*Olson*, 815 P.2d at 1359.

²¹Utah Rules of Appellate Procedure 11(a).

provided to the trial court was two pages with little to no detail.²² The evidence provided to the trial court was accepted without foundation or any attestation as to its accuracy or validity. In reviewing the trial court's action, this Court cannot consider the new evidence WCF seeks to introduce, appendices 8 and 9 of WCF's Response Brief, or any references to these documents. The trial court's judgment is not supported by the evidence. The trial court cannot simply accept one party's claim of damages without conducting a hearing or requiring proof of damages.

In order to meet the requirements of due process, Argonaut must be afforded a hearing. This hearing should be before the Labor Commission, as it has exclusive jurisdiction to determine workers' compensation benefits.²³ "District courts have no jurisdiction whatsoever over cases that fall within in the purview of the Workers' Compensation Act."²⁴ In the alternative, a hearing should have been held before the trial court. WCF must lay a foundation and authenticate all the documents that support its claim to damages, and Argonaut must be afforded the opportunity to rebut WCF's claim. WCF must present its evidence to the trial court, not the opposing party. WCF claims that Argonaut had an

²²R. 1514 and 1518

²³See Utah Code Ann. 1953 § 34A-2-407(11)(a) (2002); *Working RX, Inc. v. Workers' Compensation Fund*, 2007 UT App 376, 173 P.3d 853; and *Stokes v. Flanders*, 970 P.2d 1260 (Utah 1998).

²⁴*Sheppick v. Albertson's, Inc.*, 922 P.2d 769, 773 (Utah 1996). See also *Morrill v. J.& M Constr. Co.*, 635 P.2d 88, 89 (Utah 1981) and *Bryan v. Utah Int'l*, 533 P.2d 892 (Utah 1975).

opportunity to object to the evidence because Argonaut received the “foundational documents.”²⁵ Argonaut cannot object to evidence that is not presented to the trial court. Until evidence is presented to the trial court, there is nothing to which a party can object. Argonaut’s due process rights were violated. The fact that WCF now seeks to introduce the real evidence is an admission on their part that there was not sufficient evidence to support the trial court’s judgment.

D. Argonaut Timely Objected to the Amount of Damages

WCF also argues that Argonaut’s right of due process was not violated due to the “simple fact” Argonaut never objected to the amount of damages before the entry of judgment.²⁶ The simple fact is that Argonaut did object.²⁷ Even if Argonaut did not specifically use the word “damages” in its objections, it was one of the obvious issues remaining before the trial court. Argonaut asked the court to interpret the insurance contract that has never been considered in this case because it would directly affect the amount of damages. Even with numerous objections, the trial court still refused to hold a hearing to determine damages or any other issues. Due process rights are not measured by an opportunity to object, but an opportunity to meaningfully respond.²⁸ Due process requires that Argonaut be given a hearing on damages.

²⁵See Reply in Support of Plaintiffs’ Appellees’ Rule 11(h) Petition, pp. 2-3, and 6.

²⁶Response Brief of Workers Compensation Fund, p. 34

²⁷See R. 1334-1341, 1448-1449, and 1454-1455.

²⁸See *Eldridge*, 424 U.S. at 333.

WCF's brief only addresses the objections prior to the entry of judgment.²⁹ This implies that Argonaut cannot object to the judgment after it has been entered. Rules 59 and 60 of the Utah Rules of Civil Procedure allow for objections after judgment has been entered. Argonaut timely filed an objection after the entry of judgment.³⁰ The trial court should have allowed a hearing on damages after this objection. However, this objection was also overruled in violation of Argonaut's due process rights.³¹ The trial court's repeated refusal to conduct a hearing or transfer the case to the Labor Commission was an abuse of discretion.

II. THE INSURANCE CONTRACTS BETWEEN WADMAN CORP. AND ARGONAUT HAVE NOT BEEN CONSIDERED IN THIS CASE

Not once has the entire insurance contract or contracts between Argonaut and Wadman Corp. been considered in this case. The trial court erred when it found that the "Utah Supreme Court had conclusively ruled on all issues in the case."³² Also, WCF's contentions that all of the terms of the insurance contract are set by statute and that all of the terms were before this Court are without merit.³³

²⁹See WCF's Response Brief, pp. 29-34.

³⁰See R. 1519-1520.

³¹See R. 1533.

³²R. 1476.

³³See WCF's Response Brief, pp. 24-29.

A. The Supreme Court did not Consider the Insurance Contract between Argonaut and Wadman Corp.

This Court did not consider the all the insurance contracts in this case. The Court only considered the OCIP Manual and recognized that while the OCIP Manual was a part of the insurance contract, it “‘is not intended to provide coverage interpretations’ and the ‘terms and conditions of the policies alone govern how coverage is applied.’”³⁴ The Court also recognized that not all relevant portions of the contract were presented.³⁵

WCF claims that Argonaut is bringing “repetitious contentions ... upon the same proposition in the same case.”³⁶ Argonaut is not trying to litigate the same proposition again in this case. It only seeks one chance to be heard on the issues. This Court previously found that no contract existed between Argonaut and Iverson.³⁷ It also determined that Wadman Corp. was the statutory employer of Mr. Searle and that Argonaut should pay for Mr. Searle’s benefits pursuant to its contract with Wadman Corp.³⁸ All Argonaut is now seeking from this Court is an opportunity to have the complete contract between Wadman Corp. and Argonaut interpreted, and the amount of benefits due determined in fair and procedurally proper

³⁴*Wadman*, 2009 UT at ¶18, R. 1306.

³⁵*Id.* at ¶13; R. 1304.

³⁶WCF’s Response Brief, p. 25 (citing *Amica Mutual Insurance Company v. Schettler*, 768 P.2d 950, 969 (Utah App. 1989)).

³⁷*Wadman*, 2009 UT at ¶18, R. 1306.

³⁸*Id.* at ¶40, R. 1313.

manner.³⁹ These are distinct and separate issues than those previously decided by this Court. The law of the case doctrine is inapplicable.

This Court has ruled there is no coverage for Iverson because they never enrolled.⁴⁰ Thus the OCIP workers' compensation policy does not apply. It was Wadman's and Iverson's negligence in not enrolling that brought about this outcome. If Wadman Corp. is covered for this loss caused by its negligence, it is likely through its general liability policy. The trial court must determine if deductibles and other requirements of this policy have been met. Wadman Corp. is the responsible party as the statutory employer. Because of issues like these all of the policy contracts between Wadman Corp. and Argonaut must be presented in this case. Argonaut has attempted to present the contracts and allow their terms to be considered by the court,⁴¹ but the trial court refused.⁴² The actual terms of the insurance policies between Wadman Corp. and Argonaut were not required for this Court to determine that Wadman Corp. was the statutory employer of Mr. Searle.⁴³ However, on remand, all the insurance policies would have to be presented to the trial court in order to determine the

³⁹Standard practice when there are two policies in effect is to split payment pro rata. See 44 Am Jur 2d §§ 1781 and 1782.

⁴⁰*Id.* at ¶¶18 and 20, R. 1306 and 1307.

⁴¹See R. 1334-1341, 1448-1449, and 1454-1455.

⁴²See R. 1451-1452 and 1476.

⁴³See Utah Code Ann. 1953 § 34A-2-103(7)(a)(ii) (employer considered statutory employer if it procures any work to be done, retains supervision or control, and this work is part or process of the business of the employer).

extent of Argonaut's liability, if any, for the claims of Mr. Searle against Wadman. The trial court would not be reversing this Court if it considered the insurance contracts as WCF contends.⁴⁴ Instead, in order for the trial court to "take action consistent"⁴⁵ with *Wadman*, it must consider the insurance contracts between Wadman Corp. and Argonaut. Without doing so the benefits due to Mr. Searle cannot be determined and this Court's holding in *Wadman* cannot be implemented. The trial court erred in not allowing a proceeding to interpret the contracts between Wadman Corp. and Argonaut.

WCF also argues that Argonaut's contention that the insurance policies need to be interpreted is without merit because it has never "proffered to WCF, the Supreme Court, or the trial court the contractual language it claims would limit coverage"⁴⁶ The contracts between Wadman Corp. and Argonaut were never at issue in this case until this Court found that Wadman Corp. was the statutory employer of Mr. Searle. It has never been procedurally appropriate for Argonaut to proffer such evidence in this case. Argonaut would have gladly offered the insurance contracts had the trial court allowed it.

⁴⁴R. 1349.

⁴⁵*Wadman*, 2009 UT at ¶41.

⁴⁶Plaintiffs' Response Brief, p. 24.

B. The Workers' Compensation Act does not set all terms for all Workers' Compensation Insurance Policies

WCF argues that the Workers' Compensation Act provides all the provisions for all the workers' compensation insurance policies in Utah.⁴⁷ It states the "coverage terms are not left to chance or negotiation."⁴⁸ This argument is without merit as the Workers' Compensation Act only provides a framework for insurance policies.

If WCF's argument is correct, then there is no need for any insurance policy between an employer and an insurance carrier. If every provision is set by statute, then the need for a contract is moot. Obviously, this is not the case. The Workers' Compensation Act provides a framework for insurance contracts. It does not dictate all the terms and exclusions of contracts. While it may be true that the Workers' Compensation Act requires that insurance providers cover statutory employees if they are injured by accident arising out of and in the course of employment,⁴⁹ the Act does not require insurance providers to cover every injury to every employee.⁵⁰ Further, Argonaut has never argued that the policies between Wadman Corp. and Argonaut would exclude Mr. Searle because he was a statutory employee. If WCF's argument is correct, then coverage is required with no limitations, or requirements for every employee. There would be no need for the Labor Commission if this were the case.

⁴⁷*Id.* at 25-27.

⁴⁸*Id.* at 26.

⁴⁹*See* Utah Code Ann. 1953 § 34A-2-401(1).

⁵⁰*See e.g. McKay Dee Hospital v. Industrial Comm'n of Utah*, 598 P.2d 375, 377 (Utah 1979).

There are many other parts of the policy that could possibly limit or eliminate Argonaut's liability besides the status of Mr. Searle as a statutory employee. Every insurance policy contains requirements that the insured must meet in order for coverage to apply and every insurance policy has endorsements that modify the requirements of the policy. For example, a policy may contain self-insurance provisions that would require Wadman Corp. to pay a certain amount before coverage applies. These must be considered in order to determine the extent of Argonaut's liability. Thus, all the policies between Wadman Corp. and Argonaut must be put into evidence, not just the OCIP Manual. The Workers' Compensation Act does not dictate all terms for all policies in Utah. The usual procedures for determining workers' compensation benefits have been completely ignored throughout this case. This Court must reverse the trial court to ensure that proper procedures are followed.

Also, WCF's reliance on *Touchard v. La-Z-Boy*, 2006 UT 71, 148 P.3d 945⁵¹ that benefits are "beyond the reach of contract"⁵² is misplaced.⁵³ *Touchard* and the case it relies upon, *Retherford v. AT&T Communications of Mountain States, Inc.*, 844 P.2d 949, both deal with the tort of wrongful termination. These cases deal with employment contracts. When the court states that it places workers' compensation beyond the reach of contract, it is saying that an employee cannot waive his or her rights to receive workers' compensation benefits

⁵¹WCF's Response Brief mistakenly cites this case as *Touchard v. La-Z-Boy*, 148 P.3d 545 (Utah 2006). See WCF's Response Brief, pp. v and 27.

⁵²*Touchard v. La-Z-Boy*, 2006 UT 71, ¶ 16, 148 P.3d 545 (citing *Retherford v. AT&T Communications of Mountain States, Inc.*, 844 P.2d 949, 966 fn. 9 (Utah 1992)).

⁵³See WCF's Response Brief, p. 27.

as part of his or her employment contract. These cases have nothing to do with workers' compensation insurance contracts. These cases have no precedential or persuasive value for the current case.

III. ARGONAUT'S NOTICE OF APPEAL WAS FILED TIMELY

The final judgment in this case was not final until February 10, 2010.⁵⁴ Therefore, pursuant to Utah Rule of Appellate Procedure 4(a), Argonaut had until March 12, 2010. Argonaut timely filed its notice of appeal on March 8, 2010, four days before the deadline.⁵⁵ Even if the Court considers the January 11, 2010 judgment of the court the final judgment for purposes of Rule 4(a), Argonaut's notice of appeal is still timely. Argonaut's Objection to Judgment⁵⁶ filed January 15, 2010 tolled the time to file the notice of appeal.

A. Argonaut's Objection to Judgment Should be Treated as a Motion to Alter or Amend Judgment under Utah Rule of Civil Procedure 59

The substance of Argonaut's Objection to Judgment clearly fulfilled the requirements of a motion for new trial or amendment of judgment under Rule 59 of the Utah Rules of Civil Procedure.⁵⁷ This rule allows a trial court to "take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of

⁵⁴R. 1533.

⁵⁵R. 1548-1549.

⁵⁶R. 1519-1521.

⁵⁷See *Armstrong Rubber Co. v. Bastian*, 657 P.2d 1346, 1348 (Utah 1983) ("If the nature of the motion can be ascertained from the substance of the instrument ... an improper caption is not fatal to that motion.").

a new judgment.”⁵⁸ Such action is proper by a trial court when there are “[e]xcessive or inadequate damages,” “[i]nsufficiency of the evidence to justify the ... decision,” or “[e]rror in law.”⁵⁹ All three of these grounds are argued in Argonaut’s Objection to Judgment and the trial court’s denial of the motion was error. Also, Argonaut did not need to file an affidavit to argue these grounds, pursuant to Utah Rule of Civil Procedure 59(c).

Argonaut argued that the damages were excessive when it objected to the award of administrative costs and prejudgment interest.⁶⁰ Because these damages were awarded without an order from the Supreme Court or supported by law, the damages were given under prejudice. Thus, the elements of Rule 59(a)(5) are met.

Argonaut also argued that there was insufficient evidence to justify the award. Argonaut argued that “the Labor Commission would have exclusive jurisdiction over determining the amount of monies paid.”⁶¹ There was not enough evidence presented by WCF to determine the amount of monies that had been paid. WCF’s evidence did not show the date or amount of payments, or even a description of the payments. The evidence presented to the trial court was wholly insufficient to justify the \$790,484.59 award.

Argonaut also argued error in law. Argonaut objected to the judgment because it was in error. Argonaut argued that the judgment was in violation of Utah Code Ann. § 34A-2-

⁵⁸Utah Rule of Civil Procedure 59(a).

⁵⁹Utah Rules of Civil Procedure 59(a)(5)-(7).

⁶⁰R. 1519-1520.

⁶¹R. 1520.

401(2) because the judgment was not against Wadman Corp., Mr. Searle's statutory employer.⁶² Argonaut argued that no law allowed prejudgment interest.⁶³ Finally, Argonaut argued that the judgment violated the exclusive jurisdiction provision of the Workers' Compensation Act.⁶⁴ Thus, the substance of Argonaut's Objection to Judgment was a motion for new trial or amendment of judgment under Utah Rule of Civil Procedure 59. The fact that Utah Rule of Civil Procedure 1(a) requires courts to liberally construe the rules also weighs in favor of treating the Objection to Judgment as a Rule 59 motion. Thus the Objection to Judgment must be treated as a Rule 59 motion.⁶⁵

Because Argonaut's Objection to Judgment was really a Rule 59 motion, the time to file the notice of appeal was tolled until the trial court ruled on the motion. Utah Rules of Appellate Procedure 4(b)(1)(C) and (D) provide that if a motion under Rule 59 is filed timely the time to file a notice of appeal runs from the time the court orders on the motion. A rule 59 motion must be filed within 10 days from the entry of judgment.⁶⁶ Argonaut filed its motion four days after the judgment.⁶⁷ Because Argonaut timely filed a motion under Rule 59, the time to file the notice of appeal was tolled until the trial court issued its order on

⁶²R. 1519.

⁶³R. 1520.

⁶⁴*Id.* See also Utah Code Ann. 1953 § 34A-2-407(11)(a).

⁶⁵*Howard v. Howard*, 356 P.2d 275, 276 (Utah 1960).

⁶⁶See Utah Rule of Civil Procedure 59(b).

⁶⁷R. 1478 and 1519.

February 10, 2010. Thus Argonaut's notice of appeal was filed timely.

B. Alternatively, the Objection to Judgment should be treated as a Rule 60(b) Motion

If the Court determines that the Objection to Judgment was not a motion under Rule 59, it should be treated as a motion for relief from judgment under Rule 60(b) of the Utah Rules of Civil Procedure. This rule requires that such a request be made by motion "within a reasonable time."⁶⁸ Argonaut's motion was made four days after the entry of judgment and is therefore reasonable. Rule 60(b) motions should be liberally granted "so that controversies can be decided on the merits."⁶⁹ WCF claims that "Argonaut had ample opportunity to raise its defenses."⁷⁰ This statement is not true. All of Argonaut's pleas to the trial court fell on deaf ears. Argonaut was never given an opportunity to try its defenses on the merits. The trial court simply accepted the damages set by WCF without question or providing Argonaut a hearing to refute the claim. Argonaut was never given a chance to raise any defenses. Therefore, it would be proper for this Court to treat Argonaut's Objection to Judgment as a Rule 60(b) motion and reverse the trial court's denial of the motion for an abuse of discretion. The amount of benefits due to Mr. Searle must be determined on the merits, not by the unilateral assertions of WCF.

⁶⁸Utah Rule of Civil Procedure 60(b).

⁶⁹*Menzies v. Galetka*, 2006 UT 81, ¶54, 150 P.3d 480.

⁷⁰WCF'S Response Brief, p. 41.

IV. THE WORKERS' COMPENSATION ACT INTEREST RATE APPLIES

This case involves the payment of workers' compensation benefits and the interest rate applicable to such benefits should apply. WCF argues that this case is based on "reimbursement of the payment of a debt owed by another"⁷¹ and that the "damages are based on an unpaid contractual duty."⁷² These statements mischaracterize the nature of the dispute.

First, there is no contract between WCF and any defendant named in this case. The only party WCF has a contract with is Iverson. However, WCF seeks no payment from them.⁷³ Second, Argonaut was ordered generally by this Court to pay Mr. Searle's workers' compensation benefits.⁷⁴ No order as to the amount, including reasonableness or necessity, was entered. In order to receive interest, WCF now seeks to turn the case from workers' compensation benefits to contract. If the case is turned into a contract case, then WCF's payment of workers' compensation benefits becomes an investment with a return on interest. Argonaut has not been ordered to pay any obligation to WCF by this Court.

To support its claim that Utah Code Ann. § 15-1-1 applies, WCF relies on *Wasatch Mining Co. v. Crescent Mining Co.*, 24 P. 586 (Utah 1890). WCF's broad reading of this case would suggest that interest should be allowed on any debt. However, a workers'

⁷¹*Id.* at p. 48.

⁷²*Id.* at p. 49.

⁷³WCF did not voluntarily pay benefits to Mr. Searle out of the goodness of its heart, but because it believed it would have liability through this contract.

⁷⁴*Wadman*, 2009 UT at ¶40, R. 1313.

compensation claimant, or an insurance provider that voluntarily pays money to a claimant before the Labor Commission determines what benefits are owed, are not the type of debtors contemplated by the situation presented to the court in *Wasatch*.⁷⁵ In addition, this Court has questioned the broad application of Utah Code Ann. § 15-1-1. In *Consolidation Coal Co. v. Utah Div. of State Lands and Forestry*, 886 P.2d 514, 525 fn. 13 (Utah 1994), this Court stated that the “plain language of section 15-1-1 seems to indicate that the section was intended to apply only to a ‘loan or forbearance’ of ‘money, goods, or chose in action.’” “This court has previously expressed the view that ... section 15-1-1(2) does not necessarily even apply in all contract cases.”⁷⁶ The plain language of the statute prohibits its application in this case as WCF has not provided a loan or forbearance, but voluntarily paid benefits to Mr. Searle.

To further support its argument, WCF asserts it has a contract claim because Wadman Corp. assigned its claims to WCF.⁷⁷ However, Wadman Corp.’s claims against Argonaut have never been filed or preserved for this appeal. “In order to preserve an issue for appeal the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue. Thus, the issue must be timely and specifically raised,

⁷⁵*Compare Whitney v. Faulkner*, 2004 UT 52, ¶17, 95 P.3d 270 (“a garnishee’s obligations ... are simply not the same as those incurred by the type of debtor contemplated by the rule of *Wasatch Mining*.”).

⁷⁶*Wilcox v. Anchor Wate, Co.*, 2007 UT 39, ¶45, 164 P.3d 353.

⁷⁷WCF’s Response Brief, p. 48.

and supported by evidence or relevant legal authority.”⁷⁸ Wadman Corp.’s breach of contract claim was never presented to the trial court. In fact, Wadman Corp. has never brought a breach of contract claim against Argonaut. Wadman Corp. attempted to bring a breach of contract claim by seeking leave to amend its answer to include a cross claim.⁷⁹ However, leave was never granted and Wadman Corp.’s motion to amend was denied as moot.⁸⁰ The trial court never had an opportunity to rule on the alleged breach of contract claim. Wadman Corp. cannot assign to WCF a contract claim it was never allowed to bring and WCF cannot for the first time on appeal claim that it has a contract claim through Wadman Corp. There is no contract claim that would take this case out of the Workers’ Compensation Act and make Utah Code Ann. § 15-1-1 applicable.

WCF also contends that prejudgment interest at 10% is appropriate because the interest was calculated “with mathematical accuracy.”⁸¹ However, in order for “damages to be calculable with mathematical certainty, they must be ascertained in accordance with fixed rules of evidence and known standards of value, which the court ... must follow in fixing the amount, rather than be guided by their best judgment in assessing the amount to be allowed

⁷⁸*Connell v. Connell*, 2010 UT App. 139, ¶24, 233 P.3d 836 (internal citations omitted).

⁷⁹R. 1103-1104.

⁸⁰R.1284 pp. 34:16-35:16.

⁸¹WCF’s Response Brief, p. 47.

....”⁸² No rules of evidence were followed in the trial court. The trial court entered judgment based on a cursory computer printout⁸³ that was admitted without foundation as to accuracy or validity. This printout was not authenticated pursuant to Rule 901 of the Utah Rules of Evidence. The printout provides no detail on when payments were made or for what purpose. Argonaut was not allowed to challenge the claim to interest. The contract that allegedly allows WCF to receive interest was never put in evidence. There may be an interest provision that applies, but it is impossible to tell because the trial court never allowed the contract to be presented. The trial court completely ignored the rules of evidence and entered interest based on its best judgment. Prejudgment interest is inappropriate because the interest was not calculated with mathematical accuracy. This case involves workers’ compensation benefits and must be governed by the Workers’ Compensation Act.

This case is a dispute about workers’ compensation benefits. The Workers’ Compensation Act applies, including its interest provisions. The Labor Commission has exclusive jurisdiction to determine the benefits due to Mr. Searle and when those benefits were due.⁸⁴ As a result of this exclusive jurisdiction the interest provision in Utah Code Ann. § 34A-2-420(3) applies to the benefits due in this case. WCF has not refuted that the interest rate provided by the Workers’ Compensation Act should apply to post-judgment instead of

⁸²*Price-Orem Inv. Co. v. Rollins, Brown, and Gunnell*, 784 P.2d 475, 483 (Utah App. 1989) (internal citations omitted).

⁸³R. 1517-1518.

⁸⁴*See Sheppick*, 922 P.2d at 773.

Utah Code Ann. § 15-1-4.

V. JUDGMENT SHOULD BE ENTERED AGAINST WADMAN CORP.

The Utah State Legislature has set out the procedure to determine when an employee is entitled to workers' compensation benefits and who is responsible to pay for those benefits in the Workers' Compensation Act. This procedure ensures that employers and their insurance carriers are only liable for compensable injuries and that employees receive all the compensation they deserve. However, any concern for following the proper procedure was completely abandoned by the trial court. Usually, the Labor Commission decides if there is a compensable injury.⁸⁵ Then the Labor Commission determines which employer and which insurance carrier is liable for the benefits. Utah Code Ann. § 34A-2-401(2) provides that the responsibility to pay benefits is "on the employer and the employer's insurance carrier." This Court has determined that Wadman Corp. was the statutory employer of Mr. Searle.⁸⁶ Therefore judgment must be entered against Wadman Corp. pursuant to Utah Code Ann. 34A-2-401(2). Just because Wadman Corp. paid premiums for workers' compensation insurance does not mean it escapes all liability under the Workers' Compensation Act.⁸⁷ The Labor Commission must now determine the nature Mr. Searle's injuries and the benefits that are due from Wadman Corp. and Argonaut.

The trial court skipped steps in the proper procedure for determining liability for

⁸⁵See Utah Code Ann. 1953 § 34A-2-401(1).

⁸⁶*Wadman*, 2009 UT at ¶33, R. 1311.

⁸⁷Wadman Corp. did not pay premiums for Mr. Searle until he was enrolled after the accident.

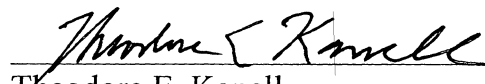
workers' compensation benefits when it entered judgment directly and solely against Argonaut. The procedures are set to provide regularity and predictability for the courts and the parties. A court cannot simply skip procedures as the trial court did in the instant case. Wadman Corp. is the statutory employer of Mr. Searle and as such is liable along with its insurance carrier for benefits. The trial court committed reversible error when it failed to include Wadman Corp. in its judgment.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's entry of judgment and require a hearing on damages where evidence of the policy can be presented or allow the Labor Commission to determine the benefits due to Mr. Searle.

DATED this 1 day of October, 2010.

PLANT, CHRISTENSEN & KANELL



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CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of October, 2010, a true and correct copy of **REPLY BRIEF OF APPELLANT ARGONAUT INSURANCE COMPANY** was mailed, postage prepaid to the following:

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