

2016

Diane Welty and Jacob Lopez, Plaintiffs and Appellants, v. Utah State Retirement Board and Public Employees' Group Term Life Program Defendants and Appellees.

Utah Court of Appeals

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IN THE
UTAH COURT OF APPEALS

DIANE WELTY and JACOB LOPEZ,

Plaintiffs and Appellants,

v.

UTAH STATE RETIREMENT BOARD and
PUBLIC EMPLOYEES' GROUP TERM LIFE PROGRAM

Defendants and Appellees.

REPLY BRIEF OF APPELLANTS

On appeal from the Utah State Retirement Board, Agency Decision Number 13-12L

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ORAL ARGUMENT REQUESTED

FILED
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ARGUMENT

The resolution of this appeal hinges on the determination of who was the last legally named beneficiary at the time of Mr. Lopez's death. To resolve the appeal in PEHP's favor, this Court must find, in contradiction of Utah Supreme Court cases, that a legally forbidden change of beneficiary form submitted by the deceased was sufficient to actually change the named beneficiary. A forbidden beneficiary should not be considered a legally named beneficiary, therefore, PEHP did not pay the last named beneficiary.

I. PURSUANT TO THE CONTRACT BETWEEN MR. LOPEZ AND PEHP AND UNDER UTAH STATUTES AND CASE LAW, THIS COURT SHOULD FIND THAT PEHP PAID THE INCORRECT BENEFICIARY WHEN IT PAID MRS. MARY ELLEN LOPEZ BASED ON A FORBIDDEN CHANGE OF BENEFICIARY FORM.

Utah statutes and the Master Policy are both silent with respect to irrevocable beneficiary designations. Since the Master Policy is a contract, common law principles of contract interpretation apply when an action or inaction is not treated directly by statute.

A. Utah statutory law and the PEHP Master Policy are silent with respect to irrevocable beneficiary designations.

PEHP argues that Utah law, the PEHP Master Policy, and the beneficiary change form require the Life plan to pay benefits to the last named beneficiary. This is not in dispute. The issue is whether PEHP, in fact, paid the last named beneficiary, legally entitled to payment, pursuant to the contract between Mr. Lopez and PEHP. The record in the case along with Utah statutory and common law establish that the "last named beneficiary" is Diane Welty for the benefit of minor children, not Mrs. Lopez. Because the last allowable beneficiary is Diane Welty, for the benefit of minor children, PEHP

failed to pay the last named beneficiary and therefore still owes payment to Ms. Welty.

PEHP's interpretation of Chapter 11 of Title 49 assumes that that Mrs. Lopez was legally allowed to be the "Last Named Beneficiary."¹ The terms of the contract between Mr. Lopez and PEHP reveal that PEHP is incorrect. The Utah Supreme Court has found that PEHP and the Master Policy are "expressly exempted . . . from the prohibition on incorporation by reference."² As discussed *infra*, the incorporation of the divorce decree locked Diane Welty in as the beneficiary until the provisions set forth in the divorce decree were satisfied.³

B. Mr. Lopez created an irrevocable beneficiary designation by incorporating his divorce decree by reference on the beneficiary change form.

While it is true that statutory law prevails over common law when they conflict,⁴ the fact of the matter is that the governing Utah statute and the PEHP Master Policy are silent as to whether a subscriber can make a beneficiary designation irrevocable. PEHP did not, and cannot, cite language from the Utah statute or the PEHP Master Policy that prohibits a subscriber from making an **irrevocable** beneficiary designation.

Contrary to PEHP's interpretation of statute, the Master Policy specifically allows subscriber's statements to become part of the contract between covered individuals and PEHP.⁵ The contract includes "the written statement, if any, of Subscribers"⁶ Utah statutory law expressly exempted PEHP from other Utah insurance statutes that prohibit

¹ See Appellee Brief pg. 17-19

² *Kramer v. State Retirement Bd.*, 195 P.3d 925, 931 (Utah 2008).

³ See Appellant's Reply Brief §I.B.

⁴ *Hansen v. Utah State Ret. Bd.*, 652 P.2d 1332, 1337-38 (Utah 1982).

⁵ See R. 300, Respt.'s hr'g Ex. L, at 10.

⁶ *Id.*

incorporation by reference.⁷ There is no conflict between statutory and common law.

This Court should find that the divorce decree was incorporated by reference into the Master Policy and made Ms. Welty the irrevocable beneficiary. Mr. Lopez clearly intended to incorporate the terms of his divorce decree by specifically referencing it in and attaching it to the beneficiary change form. His designation meets the required test for incorporation by reference. To incorporate a document by reference into a contract, 1) “the reference must be clear and unequivocal,” 2) the reference “must be called to the attention of the other party,” 3) the party “must consent thereto,” and 4) “the terms of the incorporated document must be known or easily available to the contracting parties.”⁸

The “clear and unequivocal” requirement does not necessitate a party to use specific language to effectuate the incorporation. It only requires that the reference clearly point to the specific document being incorporated. Mr. Lopez filed a beneficiary change form on December 3, 1999 that named as beneficiary, “Diane for minor children as per attached divorce decree” and attached the referenced divorce decree to the form. The phrase “as per attached divorce decree” may not be complex, but it certainly is specific enough to reference the document that was in fact attached to the beneficiary change form. “Diane” corresponded to the party in the divorce decree, and the divorce decree was required to determine the correct identity of “Diane.” Even Appellee admits

⁷ UTAH CODE ANN. § 31A-1-103(3)(f); *See also Kramer v. State Retirement Bd.*, 195 P.3d 925, 931 (Utah 2008).

⁸ *Interwest Const. v. Palmer*, 886 P.2d 92, 97 n.8 (Utah Ct. App. 1994) (quoting 17A C.J.S. CONTRACTS § 299 at 136 (1963)).

that the attached divorce decree was necessary to ascertain the beneficiary's identity.⁹

PEHP was clearly alerted to the reference by Mr. Lopez's submission of the beneficiary change form to PEHP along with a copy of the divorce decree. PEHP accepted both the beneficiary change form and the divorce decree. The form was never disallowed or returned to Mr. Lopez as incomplete. As the divorce decree was attached to the beneficiary change form, the terms of the document were easily available to PEHP.

PEHP argues that it never consented to incorporation of the divorce decree. There is no evidence to support this assertion. In contrast, PEHP's actions demonstrate that it consented to incorporation of the divorce decree by accepting the beneficiary change form along with the attached divorce decree. PEHP did not request more information from Mr. Lopez or disallow his form as deficient, even though PEHP had the power to do so. Furthermore, PEHP admits that it would have used the divorce decree to identify "Diane for minor children." Only one section of the divorce decree references life insurance policies, and it specifically orders Mr. Lopez to maintain an irrevocable beneficiary designation in favor of Diane Lopez for the benefit of minor children. There was no reason for Mr. Lopez to attach the divorce decree if he had not intended to make an irrevocable beneficiary designation in compliance with his divorce decree.

II. NEITHER UTAH LAW NOR THE MASTER POLICY FULLY ABSOLVE PEHP OF LIABILITY FOR PAYING THE INCORRECT BENEFICIARY.

This Court should hold that PEHP is liable under Utah law, the Master Policy, and Utah case law because PEHP paid the incorrect beneficiary when it was fully aware of

⁹ See Appellee's Brief, at 25.

the beneficiary designation made pursuant to a divorce decree. PEHP argues that it is fully absolved of any liability under Utah law and the PEHP Master Policy because they paid out benefits pursuant to a claim made on the policy. PEHP's arguments are misguided in that they rely on the premise that the individual who made the claim was a legitimate beneficiary. As demonstrated, Mr. Lopez's initial beneficiary designation was irrevocable, leaving any subsequent attempt to change the beneficiary null and void. PEHP was aware of the irrevocable nature of the beneficiary and knew, or should have known, that it was not paying the last named beneficiary allowed under Utah law and the contract formed with Mr. Lopez when he submitted the beneficiary designation in 1999.

A. PEHP should still be held liable for paying an incorrect beneficiary under Utah law.

Utah law does not completely absolve PEHP of liability from distributing funds to the incorrect beneficiary. PEHP argues that it is fully absolved of liability under Utah law because it paid out benefits to the "last named beneficiary." This argument fails because it falsely relies on the premise that Mrs. Lopez constituted a beneficiary under Utah law.

PEHP relies on the section titled, "Benefits payable in name of beneficiary – Delivery."¹⁰ Subsection (1), paragraph (a) of this section states, "Any benefits payable to a beneficiary shall be made in the name of and delivered to the beneficiary..."¹¹ Paragraph (d) of the same section provides, "The total of the payments made under this section shall fully discharge and release the office from any further claims."¹²

¹⁰ UTAH CODE ANN. § 49-11-610.

¹¹ *Id.* at § 49-11-610(1)(a).

¹² *Id.*

However, Utah Code § 49-11-102 (11) defines “beneficiary” as “any person *entitled to receive a payment* under this title through a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.” (Emphasis added.) The statutory language specifically contemplates that the named beneficiary be “entitled to receive a payment.” In this case, the only person entitled to receive a payment was Diane Welty, the irrevocably designated beneficiary.

B. PEHP should still be liable under the Master Policy.

This Court should find that Ms. Welty is the correct beneficiary under the terms of the Master Policy because PEHP did not make payment to Mrs. Lopez in good faith. PEHP argues that the Master Policy requires payment to the last named beneficiary under the policy and that the terms of the policy discharge it from liability if it pays the proceeds of the policy in good faith. Section V of the Master Policy states,

BENEFICIARY

A Subscriber shall designate a primary beneficiary and a contingent beneficiary at the time of application for coverage. A subscriber may change his or her beneficiar(ies) by filing a written notice of the change with the Plan.... Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment.

PEHP fails to consider that the Master Policy does not prohibit subscribers from making a beneficiary designation irrevocable. The language of the Master Policy only requires the subscriber to “designate a primary beneficiary and a contingent beneficiary at the time of application for coverage.” The language of the Master Policy subsequently *permits* the subscriber to change beneficiaries. Nothing in the Master Policy prohibits the Subscriber from making his beneficiary designation irrevocable at any time.

As owner of the policy, Mr. Lopez had a right to deal with his policy in the manner in which he desired.¹³ By choosing to incorporate the terms of his divorce decree into the beneficiary change form, and therefore the Master Policy, Mr. Lopez voluntarily gave up his right to subsequently change the beneficiary. Permissive use of the word “*may*” by the Master Policy gave Mr. Lopez the option to change his or her beneficiaries, if he chose to do so. However, the Master Policy also gave Mr. Lopez broad latitude to designate a beneficiary and did not prohibit him from making the designation irrevocable. Without a prohibition on the subscriber's ability to create an irrevocable designation, Mr. Lopez was within his contractual rights to “lock” his beneficiary, as least until the provisions outlined in the divorce decree were satisfied.

PEHP’s failure to disallow subsequent beneficiary change forms cannot be construed to mean that it made the payment in good faith. In Utah, the insurance company has the burden of proving it has a defense to non-payment.¹⁴ PEHP alone was responsible for ensuring that the submitted beneficiary change forms were complete and consistent with their policies and the Master Life Policy. Mr. Lopez did not attach the divorce decree to his beneficiary change form solely for the purpose of clarifying Ms. Welty’s name. By noting “as per attached divorce decree,” and attaching the divorce decree, which only had one provision related to life insurance, he was directing that the beneficiary designation be maintained pursuant to that section of the divorce decree.

¹³ See *Culbertson v. Cont'l Assur. Co.*, 631 P.2d 906, 909-910 (Utah 1981).

¹⁴ See *Moore v. Prudential Ins. Co. of Am.*, 491 P.2d 227, 230 (Utah 1971); See also *Ocean Accident & Guaranty Corp. v. Rubin*, 73 F.2d 157 (9th Cir. 1934); 44 Am.Jur.2d 892.

PEHP's negligent acceptance of subsequent beneficiary change forms does not rise to acting in "good faith" when it has a duty to disallow any forms that are incomplete or inconsistent with its program. As in *Travelers*, PEHP "should have disregarded the forbidden attempted change of beneficiary."¹⁵ PEHP's only evidence of acting in good faith is its payment to Mrs. Lopez, and it does not deny there is no prohibition on a subscriber from making an irrevocable designation. Therefore, this Court should rule that the subsequent change in beneficiary forms were forbidden, and the Master Policy requires payment to Ms. Welty.

C. PEHP bears the risk of double payment if it pays the incorrect beneficiary.

Just as it acknowledged that the beneficiary of an insurance policy has no interest but merely an expectancy, contingent upon the insured's death,¹⁶ the Utah Supreme Court also acknowledged that insurance companies may have to pay the benefit twice if they pay the wrong beneficiary.¹⁷ In *Travelers*, the Utah Supreme Court specifically states,

This is an interpleader suit for the court to decide between various contending claimants to a fund in which the plaintiff has no interest. If the plaintiff herein is willing to take its chances on paying twice, we should not worry about it. We do our duty by deciding which of the named claimants has the better claim to the money.¹⁸

When there are competing claims for life insurance proceeds, particularly in cases involving requirements under divorce decrees, an insurance company should present

¹⁵ *Travelers*, 531 P.2d at 485.

¹⁶ *Culbertson*, 631 P.2d at 909-910.

¹⁷ *Travelers*, 531 P.2d at 485.

¹⁸ *Id.*

them to a court to evaluate the claims. While this case does not involve an interpleader, PEHP had in its possession an irrevocable beneficiary designation, pursuant to a divorce decree. PEHP was aware of and had a copy of the divorce decree. PEHP also had and was aware of subsequent beneficiary change forms that purported to change the irrevocable beneficiary designation. PEHP failed to ensure that it was making payment to the proper beneficiary and should be held accountable for that failure.

III. PEHP SHOULD BE LIABLE IN EQUITY FOR PAYING THE INCORRECT BENEFICIARY UNDER UTAH LAW.

PEHP's equitable arguments fail because they assume that Mrs. Lopez was a legitimate beneficiary under the policy. Under applicable Utah statutes, Mrs. Lopez is not a beneficiary, and PEHP's payment to Mrs. Lopez was not made in good faith because PEHP had full knowledge of the irrevocable beneficiary designation in favor of Ms. Welty. Further, PEHP has not provided sufficient evidence to claim its good faith defense. Utah case law acknowledges that it is the insurance company's responsibility to determine the correct beneficiary when there are competing claims to the proceeds.¹⁹ Additionally, PEHP's equitable argument relating to time-barred claims cannot be considered by this Court after PEHP did not raise it previously and stipulated that Ms. Welty's claim was timely under the applicable statute of limitations.

A. PEHP failed to meet its burden to prove that it is entitled to the defense of good faith payment when it made payment to a forbidden beneficiary.

PEHP incorrectly shifts the burden of proof related to good/bad faith payments under the insurance contract to Ms. Welty. To avail itself of the "good faith" protection,

¹⁹ *Id.*

PEHP bears the burden to establish that it paid in good faith.²⁰ PEHP failed to demonstrate that it paid in good faith because PEHP was aware of the irrevocable beneficiary designation, it permitted Mr. Lopez to submit subsequent beneficiary change forms, and it paid a forbidden beneficiary, failing to properly administer the policy.

PEHP is responsible to “act as a self-insurer of employee benefit plans and administer those plans.”²¹ As a plan administrator, it reviewed all beneficiary change forms, and it accepted Mr. Lopez’s beneficiary change form that contained a reference to and an attached copy of his divorce decree. PEHP’s failure to administer the policy according to an irrevocable beneficiary designation does not constitute good faith. PEHP alone has the ability to review and accept beneficiary change forms. Any subsequent attempt to change the beneficiary of the policy after Mr. Lopez made an irrevocable beneficiary designation should have been forbidden, according to the decision in *Travelers*. PEHP’s failure to honor Mr. Lopez’s irrevocable beneficiary designation when it was clearly aware, or should have been aware, of the terms of the divorce decree in relation to the life insurance policy is not good faith.

PEHP cites *Crosby v. Crosby* in support of discharging itself from liability by making a good faith payment to Mrs. Lopez. Specifically, PEHP notes that the court in *Crosby* acknowledged that there is a:

... widespread principle that an insurer is discharged from all subsequent liability when it makes good faith payments to a purported beneficiary without notice of any competing claims. Such a rule minimizes the chances for imposing double liability for mistaken, but good faith payments to a

²⁰ *Moore*, 491 P.2d at 230.

²¹ Utah Code § 49-20-401(1)(a) (2015).

beneficiary.²²

The facts in the instant case are distinguishable from those in *Crosby* and do not constitute good faith on behalf of PEHP. In *Crosby*, the policy in question was payable to the “widow of a deceased male employee, but only if she was legally married to him at the time of his death and had been legally married to him for at least one year.”²³ The deceased policy holder never obtained a legal divorce after he separated from his first wife. He subsequently married another woman and designated her as his wife and beneficiary of the life insurance policy. The plan provider only had a copy of a marriage certificate from his second marriage and the deceased’s designation of his second wife as his wife and beneficiary. When the deceased died, the insurance company paid the benefits to the second wife. The first wife subsequently filed a claim for the benefits of the life insurance policy. The court held that the policy provider was not liable to pay the first wife because the policy provider paid the benefits to the second wife in good faith.

In this case, PEHP was clearly on notice of a potential competing claim for the life insurance proceeds because an irrevocable beneficiary designation was on file with its office. As established above, the divorce decree and its terms were incorporated into the original beneficiary change form and established an irrevocable beneficiary. The insurance provider in *Crosby* had no reason to believe there was anything amiss regarding the deceased’s beneficiary designation because “the only evidence available was [a] presumptively valid marriage certificate and [the deceased’s] designation of [the

²² *Crosby v. Crosby*, 968 F.2d 79, 83 (4th Cir. 1993) (internal citations omitted).

²³ *Id.* at 81.

second wife] as his wife and beneficiary.”²⁴ Unlike the insurance provider in *Crosby*, PEHP had evidence in its file that an irrevocable beneficiary designation had been made by Mr. Lopez and was at least aware of the possibility of a competing claim. Like the insurance company in *Travelers*, PEHP should have sought clarification from the court as to who the proper beneficiary was to avoid paying the benefit twice.

In each of the Utah Supreme Court cases addressing payment of life insurance proceeds to a beneficiary as required under a divorce decree, the Court has held that the beneficiary as required under the divorce decree is the proper beneficiary even when the insured changes the beneficiary of the policy. Utah case law is clear that the last named beneficiary of a life insurance policy is not entitled to benefits of the policy when there is a divorce decree requiring the subscriber to name a former spouse or children as the beneficiary. That principle is even clearer in this instance where the plan provider was aware of the terms of the divorce decree, and the subscriber intended to make the beneficiary designation irrevocable pursuant to the divorce decree.

B. Utah case law allows Ms. Welty to seek recovery from PEHP.

As discussed above, Utah case law implies that an insurance company takes its chances on paying a policy twice if it pays the incorrect beneficiary. *Travelers* does not require a life insurance company to pay both the named beneficiary and the beneficiary under the divorce decree; rather, it implies in dicta that the insurance company bears the risk of paying the policy twice if it takes its chances and pays the incorrect beneficiary.²⁵

²⁴ *Id.* at 84.

²⁵ *Travelers*, 531 P.2d at 485.

Ultimately, the court in *Travelers* held,

A court of equity can and should regard as done that which ought to be done; and, similarly, it can and should regard as not having been done that which ought not to have been done. Therefore, in judging the rights of these contending parties, the court should have disregarded the forbidden attempted change of beneficiary whereby the second wife was substituted for the first wife.²⁶

Pursuant to *Travelers*, any attempt by Mr. Lopez to substitute his second wife for the first after he made an irrevocable beneficiary designation pursuant to his divorce decree should have been disregarded by PEHP and considered forbidden. PEHP's failure to refuse the beneficiary change forms in light of the irrevocable beneficiary designation on file opens it up to liability and "tak[ing] its chances on paying twice."²⁷ Regardless of whether Ms. Welty could have a claim against Mrs. Lopez to recover the proceeds of the life insurance policy, PEHP remains the responsible party for administering the plan and should be held accountable for its failure to disallow any attempted change of beneficiary by Mr. Lopez. PEHP was not a party to the divorce, but PEHP was obligated to honor the terms of Mr. Lopez's divorce decree because it was properly incorporated into the life insurance contract and pursuant to the Utah Supreme Court's holding in *Travelers*.

C. PEHP cannot raise any claims related to the length of time between Mr. Lopez's death and the claim brought by Appellants against PEHP.

This Court should not consider PEHP's equitable argument of laches because it did not raise this argument before the Utah State Retirement Board, and it waived all arguments related to barring claims pursuant to an applicable statute of limitations.

²⁶ *Id.*

²⁷ *Id.*

Laches is an issue to be determined by the trial court²⁸ and “cannot be a defense before the statutory limitation has expired.”²⁹ “Equitable claims will be barred after the time fixed by the analogous statute of limitations unless extraordinary circumstances make the application unjust.”³⁰ The purpose of an applicable statute of limitations is to prevent litigation that would be unfair because of surprise, fraudulent, or stale claims and the potential injustice that could arise therefrom.³¹

For the first time in this proceeding, PEHP argues that the Ms. Welty is barred from recovery in equity because of the delay in the raising claim to the life insurance benefits. PEHP did not raise any equitable arguments before the Utah State Retirement Board, and as part of the stipulated facts presented before the board, PEHP specifically “waived all arguments relating to barring claims pursuant to an applicable statute of limitations.”³² Laches is essentially a statute of limitations in equity. Since PEHP agreed that this action was within the applicable statute of limitations, it waived any arguments for laches as well because the statutory limitation period had not expired and laches cannot be a defense prior to that time.

CONCLUSION

Utah case law clearly supports paying a life insurance benefit to a former spouse

²⁸ *Papanikolas Bros. Ent. v. Sugarhouse Shopping Ctr. A.*, 535 P.2d 1256, 1260 (Utah 1975).

²⁹ *F.M.A. Financial Corp. v. Build Inc.*, 404 P.2d 670, 672 (Utah 1965).

³⁰ *CIG Exploration, Inc. v. State*, 24 P.3d 966, 969 (Utah 2001).

³¹ *Davis v. Provo City Corp.*, 193 P.3d 86, 91 (Utah 2008) (quoting *Vigos v. Mountainland Builders, Inc.*, 993 P.2d 207, 213 (Utah 2000) and *Lund v. Hall*, 938 P.2d 285, 291 (Utah 1997).

³² R. at 246.

or children pursuant to the terms of a divorce decree, even when the policy holder changes the beneficiary of that policy or the policy is not specifically identified in the divorce decree. This Court should find Ms. Welty for the benefit of minor children are the last named beneficiaries legally entitled to payment under the policy. Mr. Lopez clearly intended to incorporate the terms of the divorce decree into his beneficiary designation made in 1999 by specifically referencing it and attaching a copy of the divorce decree to the form. PEHP accepted the form and even used the divorce decree to identify the beneficiary by her full name.

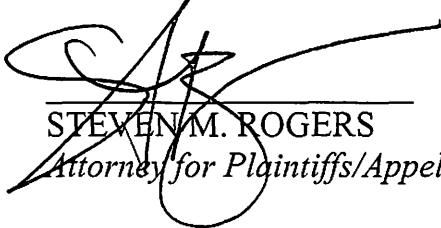
PEHP's payment of the life insurance proceeds to Mrs. Lopez does not completely absolve it of liability because Mrs. Lopez was not entitled to the payment, and therefore PEHP did not make the payment in good faith. Simply being designated a beneficiary is not sufficient to create a contractual right to life insurance proceeds when the designation is legally forbidden under Utah law.

PEHP's failure to raise the issue of delay in prior arguments and its specific waiver of time-barred arguments pursuant to the applicable statute of limitations prohibit it from making that argument at this stage. Laches is intended to serve as an equitable form of the statute of limitations and is not applicable prior to the expiration of an analogous statute of limitations.

PEHP is liable to Ms. Welty under the life insurance contract and should pay her the benefit she is entitled to under Utah law.

SIGNATURE OF COUNSEL

Appellants respectfully submit the foregoing by and through their undersigned counsel of record, Steven M. Rogers, on this the 25th day of April, 2016.



STEVEN M. ROGERS
Attorney for Plaintiffs/Appellants

Certificate of Service

I hereby certify that on this the 25th day of April, 2016, I caused the foregoing *Reply Brief of Appellants* to be served on the following persons via first-class U.S. Mail, postage prepaid:

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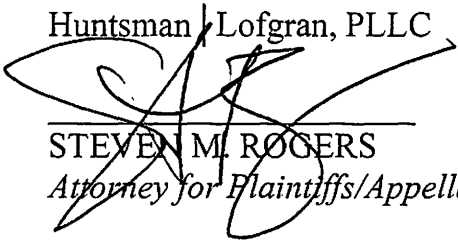

STEVEN M. ROGERS
Attorney for Plaintiffs/Appellants

REQUEST FOR ORAL ARGUMENT

Appellants renew their request for oral argument in order to answer questions concerning the arguments above.

DATED: April 25, 2016.

Huntsman Lofgran, PLLC



STEVEN M. ROGERS

Attorney for Plaintiffs/Appellants

**CERTIFICATE OF COMPLAINE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND
TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation for a reply breif under UT. R. APP. 24(f)(2) because this brief contains 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record.

2. This brief complies with the typeface requirements of UT. R. APP. 27 and the type style requirements of UT. R. APP. P. 27 because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 13 point Times New Roman.


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