

2016

**Everett P. Wilson Jr. And Darla Wilson, Appellees/Respondents,  
vs. Cade M. Krueger**

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**Educators Mutual Insurance Association Appellant/Petitioner, vs.  
Cade M. Krueger,**

Utah Supreme Court

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IN THE UTAH SUPREME COURT

EVERETT P. WILSON JR., and DARLA  
WILSON,

Appellees/Respondents,

vs.

CADE M. KRUEGER.

EDUCATORS MUTUAL INSURANCE  
ASSOCIATION

Appellant/Petitioner,

vs.

CADE M. KRUEGER.

Utah Supreme Court  
Case No. 20160227-SC

Utah Court of Appeals  
Case No. 20150150-CA

Fourth Judicial District Court  
Case No. 110400083

BRIEF OF APPELLANT/PETITIONER

FROM THE UTAH COURT OF APPEALS' FEBRUARY 25, 2016 RULING  
REVERSING THE FINAL DECISION OF THE  
UTAH FOURTH JUDICIAL DISTRICT COURT

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UTAH APPELLATE COURTS

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A. *Wilson v. Educators Mut. Ins. Ass'n.*, 2016 UT App 38, 368 P.3d 471.

B. *Findings of Fact, Conclusions of Law and Order Regarding Allocation of Interpleader Amount Deposited with the Court*, entered February 6, 2015.

C. Order Concerning EMIA's Standing, entered April 14, 2014.

D. *AGCS Marine Ins. Co. v. Adler Hot Oil Serv. Inc.*, No. 150800020 (Utah 8th Dist. Ct. filed Feb. 26, 2015).

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D(2). Amended Complaint (Filed Feb. 27, 2015).

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## JURISDICTION

Pursuant to Utah Code Ann. § 78A-3-102(3)(a) this Court has appellate jurisdiction over a judgment of the Utah Court of Appeals. Further, pursuant to Utah Code Ann. § 78A-3-102(5), the Utah Supreme Court granted certiorari to hear this appeal in an order dated July 6, 2016.

## STATEMENT OF ISSUES AND STANDARD OF REVIEW

**Issue 1:** Whether the court of appeals erred in holding Petitioner's suit must be dismissed for failure to bring its subrogation action in the name of its insured.

**Standard of Review:** "On certiorari, we review the decision of the court of appeals, not the decision of the trial court. In doing so, this court adopts the same standard of review used by the court of appeals: questions of law are reviewed for correctness, and the trial court's factual findings are reversed only if clearly erroneous." *State v. Harmon*, 910 P. 2d 1196, 1199 (Utah 1995) (citing *Butterfield v. Okubo*, 831 P.2d 97, 101 n.2 (Utah 1992)).

Interpretation of statutes and decisional precedents are reviewed for correctness. *See MacFarlane v. Utah State Tax Comm'n*, 2006 UT 25, ¶ 9, 134 P.3d 1116 ("A matter of statutory interpretation is a question of law that we review on appeal for correctness." (internal citation and quotation marks omitted)); *see also In re Adoption of A.F.K.*, 2009 UT App 198, ¶ 16, 216 P.3d 980 (explaining that "issues that require interpretation of prior decisional precedents" are "questions of law that are reviewed for correctness" (internal citation and quotation marks omitted)).

**Preservation in Record:** This issue was preserved at numerous points before the trial court, including R. at 457–75; R. at 821.<sup>1</sup> This issue also arose when the Utah Court of Appeals rendered its decision on February 25, 2015. Petitioner requested certiorari to hear this issue on March 24, 2016. Pet. for Writ of Cert. at 18–19. The statement of this issue is taken verbatim from this Courts’ order granting certiorari on July 6, 2016.

**Issue 2:** Whether Rule 17 of the Rules of Civil Procedure provided an alternative to dismissal of Petitioner’s complaint.

**Standard of Review:** “On certiorari, we review the decision of the court of appeals, not the decision of the trial court. In doing so, this court adopts the same standard of review used by the court of appeals: questions of law are reviewed for correctness, and the trial court's factual findings are reversed only if clearly erroneous.” *Harmon*, 910 P. 2d at 1199.

“[T]he interpretation of a rule of procedure is a question of law that we review for correctness.” *Brown v. Glover*, 2000 UT 89, ¶ 15, 16 P.3d 540.

**Preservation in Record:** This issue arose when the Utah Court of Appeals rendered its decision on February 25, 2015. Petitioner requested certiorari to hear this issue on March 24, 2016. Pet. for Writ of Cert. at 18–19. The statement of this issue is taken verbatim from this Courts’ order granting certiorari on July 6, 2016.

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<sup>1</sup> In this brief, the court record of pleadings and papers shall be referred to as “R. page number.”

## CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

### STATUTES:

#### **Utah Code Annotated Section § 31A-21-108: Subrogation actions**

Subrogation actions may be brought by the insurer in the name of its insured.

### RULES:

#### **Rule 17 Utah Rules of Civil Procedure (in relevant part):**

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Utah. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

## STATEMENT OF THE CASE

### **Nature of the Case**

Appellant/Petitioner, Educators Mutual Insurance Association ("EMIA"), appeals the Utah Court of Appeals' opinion *Wilson v. Educators Mutual Insurance Association*, 2016 UT App 38, 368 P.3d 471. A true and correct copy of said opinion is attached hereto and hereby incorporated as Addend. A. Appellees/Respondents in this matter are Everett P. Wilson Jr. and Darla Wilson ("Wilsons"). The nature of this appeal focuses on whether an insurer has the right to bring a subrogation action in its own name or if the

insurer must bring the action in the name of the insured. This appeal focuses secondarily on the question of if an insurer must bring a subrogation action in the name of the insured, but the insurer instead brings the action in its own name, is dismissal of the subrogation claim required, or does Rule 17 of the Rules of Civil Procedure provide an alternative to dismissal.

Jessica Wilson, an insured of EMIA, was struck by a car while crossing the road and passed away shortly thereafter from her injuries. R. at 571. EMIA paid for Jessica Wilson's medical treatment. R. at 561. Jessica Wilson's parents filed a wrongful death claim against the driver for burial expenses and compensation for loss of their daughter's society, love, companionship, protection, and affection. R. at 570. EMIA filed a subrogation claim in its own name against the driver to recoup the expenses EMIA had paid for Jessica Wilson's medical treatment following the accident. R. at 771–75. EMIA and Wilsons' cases were consolidated. R. at 541. The liability insurance carrier for the tortfeasor interplead the driver's policy limit—\$100,000—to be allocated by the district court, and EMIA and the Wilsons released their claims against the driver. R. at 543. The district court entered its *Findings of Fact, Conclusions of Law and Order Regarding Allocation of Interpleader Amount Deposited with the Court* (attached as Addend. B), allocating \$24,182.31 to EMIA, and \$75,817.69 to the Wilsons. R. at 844.

#### **Course of Proceedings/Disposition in the Lower Courts**

EMIA filed a subrogation claim against the tortfeasor to recoup the expenses EMIA had paid for Jessica Wilson's medical treatment following the accident. R. at 771–75. The tortfeasor moved to dismiss EMIA's claim, challenging EMIA's standing to

bring its suit. R. at 560–61. The district court entered an order (attached as Addend. C) denying the motion to dismiss, adjudging that EMIA had standing to bring an action for subrogation under Utah’s Subrogation Statute, and to do so in its own name. R. at 821. EMIA and Wilsons’ cases were consolidated. R. at 541. The liability insurance carrier interplead the driver’s policy limit—\$100,000—to be allocated by the court, and EMIA and the Wilsons released their claims against the driver. R. at 543.

The district court entered its *Findings of Fact, Conclusions of Law and Order Regarding Allocation of Interpleader Amount Deposited with the Court*, allocating \$24,182.31 to EMIA, and \$75,817.69 to the Wilsons. R. at 844. The Wilsons filed a Notice of Appeal on February 27, 2015. R. at 759. Pursuant to Utah Code Ann. § 78A-3-102(4) the Utah Supreme Court transferred the matter to the Utah Court of Appeals on or about March 19, 2015. R. at 763.

After briefing and oral argument, the Utah Court of Appeals rendered its opinion on February 25, 2016. That opinion reversed the decision of the Fourth Judicial District Court on the basis that EMIA lacked standing to bring its subrogation claim against the tortfeasor in its own name, and remanded the matter with instructions that EMIA’s claims be dismissed. *Wilson*, 2016 UT App 38, ¶ 13, 368 P.3d 471. Because the Utah Court of Appeals determined that EMIA lacked standing, the other issues presented by the Wilsons on appeal were not addressed directly in its opinion. *Id.* at ¶ 7. EMIA sought review of the Utah Court of Appeals’ decision, filing its Petition for Writ of Certiorari on March 24, 2016. Certiorari was granted by the Utah Supreme Court in an order dated July 6, 2016.

## Statement of Facts

On or about September 19, 2010, Jessica Wilson was walking in a crosswalk on the campus of Brigham Young University when she was struck by a car driven by Cade Krueger (the “tortfeasor”). R. at 571. Jessica Wilson was severely injured as a result and later passed away. *Id.*

At all times relevant to this matter, Jessica Wilson was insured through EMIA for medical expenses. R. at 843. The medical policy contains provisions and terms governing EMIA’s right to reimbursement and subrogation. R. at 624–25. *See generally* R. at 605–85 (setting forth full medical policy). As a result of the automobile accident caused by the tortfeasor, EMIA paid medical expenses on behalf of Jessica Wilson in the amount of \$78,692.34. R. at 772.

EMIA and the Wilsons filed separate claims against the tortfeasor; EMIA sued for reimbursement, including interest, of the medical expenses it paid in behalf of Jessica Wilson that were incurred when the tortfeasor’s vehicle struck her, and Wilsons sued the tortfeasor for the wrongful death of Jessica Wilson. R. at 843.

The tortfeasor filed a motion to dismiss EMIA’s suit, arguing that EMIA lacked standing to bring its suit. R. at 560–61. The district court entered an order denying the motion to dismiss, adjudging that EMIA had standing to bring an action for subrogation under Utah’s Subrogation Statute, and to do so in its own name. R. at 821.

The claims filed by EMIA and the Wilsons were consolidated and the parties stipulated to release and dismiss the tortfeasor from the lawsuit upon the tortfeasor

interpleading \$100,000—the tortfeasor insurance liability policy limit—with the trial court. R. at 543, 841.

Upon weighing the equities between Wilsons and EMIA, the trial court ordered that Wilsons receive \$75,817.69 of the interpleaded funds, while EMIA received \$24,182.31. R. at 840–44.

### SUMMARY OF THE ARGUMENT

The Utah Court of Appeals erred in concluding that EMIA lacked standing to pursue a subrogation action in its own name and in concluding that neither Utah’s subrogation statute nor Utah’s case law grant insurer the right to pursue a subrogation action in its own name. Utah case law going back to the turn of the twentieth century clearly holds that a subrogating insurer is a real party in interest in a subrogation proceeding and may maintain its subrogation action in its own name. No case or statute has altered this real party in interest rule, and insurers continue to bring subrogation actions in either their own name or the name of their insured. Until the court of appeals decision in this matter, no Utah appellate court has questioned the insurer’s right to maintain a subrogation action in its own name in the last seventy years.

In reaching its conclusion, the court of appeals relied heavily on the 1944 case, *Johanson v. Cudahy Packing Co.*, 152 P.2d 98 (Utah 1944). This reliance on *Johanson* is misplaced primarily because the portions of *Johanson* quoted by the court of appeals were not the law the *Johanson* Court adopted; the *Johanson* Court first analyzed the different positions taken by other states (including the portions quoted by the court of appeals) before adopting a completely contrary position.

The court of appeals ignores several policy implications including how its decision would alter what losses an insurer is willing to cover, how insurers will likely be required to raise insurance premiums, and how the court of appeals' decision would make it impossible for an insurer to recover in instances where an insured passes away from the actions or inactions of a tortfeasor. Also, while not central to the issues here on appeal, the court of appeals' opinion includes problematic dicta concerning an heirs' supposed superior right to reimbursement over an insurer when an insured passes away. This language, unless addressed, will likely cause confusion in future cases where insureds pass away from the actions or inactions of a tortfeasor.

Finally, even if the court of appeals was correct that an insurer cannot bring a subrogation action in its own name, the court of appeals was incorrect to dismiss EMIA's action. Rather, Rule 17 of the Utah Rules of Civil Procedure provides an alternative to dismissal.

### **ARGUMENT**

**THE DECISION OF THE UTAH COURT OF APPEALS SHOULD BE REVERSED BECAUSE ITS INTERPRETATION OF UTAH CODE ANNOTATED § 31A-21-108 WAS INCORRECT, AND THE DECISION WAS CONTRARY TO THE REQUIREMENTS OF RULE 17 OF THE UTAH RULES OF CIVIL PROCEDURE.**

As this Court has instructed, "On certiorari, we review the decision of the court of appeals, not the decision of the trial court. In doing so, this court adopts the same standard of review used by the court of appeals: questions of law are reviewed for correctness, and the trial court's factual findings are reversed only if clearly erroneous." *State v. Harmon*, 910 P. 2d 1196, 1199 (Utah 1995).

In this matter the decision of the Utah Court of Appeals should be reversed primarily for two reasons: (1) the Utah Court of Appeals' interpretation of Utah Code Ann. § 31A-21-108 was incorrect; and (2) even assuming that the Utah Court of Appeals' interpretation was correct, remanding the matter to the trial court with instructions to dismiss EMIA's claims was a violation of Rule 17 of the Utah Rules of Civil Procedure.

**I. THE UTAH COURT OF APPEALS' INTERPRETATION OF § 31A-21-108 WAS INCORRECT.**

Utah Code Ann. § 31A-21-108 provides “[s]ubrogation actions may be brought by the insurer in the name of its insured.” The court of appeals held § 31A-21-108 does not give EMIA standing to bring a subrogation action in its own name. *See Wilson*, 2016 UT App 38, ¶ 8, 12, 368 P.3d 471. Interpretation of statutes and decisional precedents are reviewed for correctness. *MacFarlane*, 2006 UT 25, ¶ 9, 134 P.3d 1116; *In re Adoption of A.F.K.*, 2009 UT App 198, ¶ 16, 216 P.3d 980.

In this matter, the court of appeals' construction of § 31A-21-108 is untenable for several reasons and its decision should be reversed. First, the manner in which the court of appeals interpreted the permissive “may” in § 31A-21-108 nullifies the effect of the statute because the right for an insurer to subrogate already exists at common law. Second, Utah case law illustrates that insurers regularly bring subrogation actions in their own names, and have before the enactment of § 31A-21-108. Third, the court of appeals misapplied *Johanson v. Cudahy Packing Co.*, 152 P.2d 98 (Utah 1944). Fourth, the manner in which the court of appeals interpreted § 31A-21-108 would make it impossible for an insurer to subrogate against a tortfeasor if the insured dies as a result of a

tortfeasor's negligence. Fifth, the court of appeals' interpretation of § 31A-21-108 creates serious policy issues. Finally, the court of appeals cited incorrectly to case law to support its proposition that heirs have a superior right of recovery.

**A. UNDER THE COURT OF APPEALS' REASONING, THERE WOULD HAVE BEEN NO NEED TO ENACT § 31A-21-108.**

The manner in which the court of appeals construed §31A-21-108 nullifies the effect of the statute and makes it meaningless. The court of appeals examined the common law to determine whether an insurer may bring a subrogation action in its own name, stating, "a suit at law to enforce such right of subrogation must, at common law, be brought in the name of the insured, rather than by the insurance company in its own name and right." *Wilson*, 2016 UT App 38, ¶ 10, 368 P.3d 471 (quoting *Johanson*, 152 P.2d at 104). The court of appeals' reliance on *Johansen* is misplaced for reasons that will be discussed in Section I(C) of this Brief. However, if the common law already allowed an insurer to bring a subrogation action in the name of the insured, as the court of appeals asserts, then there would have been no reason for the legislature to enact §31A-21-108, as under the court of appeals' interpretation of the statute, its only effect is to allow insurers to bring a subrogation action in the name of an insured.

**B. A REVIEW OF UTAH'S SUBROGATION CASE LAW SHOWS THAT UNDER UTAH LAW THE SUBROGATING INSURER HAS LONG BEEN REGARDED AS A REAL PARTY IN INTEREST WITH A RIGHT TO BRING A SUBROGATION ACTION IN ITS OWN NAME.**

The Utah Court of Appeals stated, "Our review of Utah case law convinces us that . . . no independent right exists for an insurer to seek subrogated damages in its own name." *Wilson*, 2016 UT App 38, ¶ 8, 368 P.3d 471. On the contrary, a review of Utah

case law shows that Utah has long recognized that the subrogating insurer is a real party in interest in a subrogation action and has the right to seek subrogated damages in its own name.

In 1913, National Union Fire Insurance Co. brought an action against a defendant railroad company on behalf of its insured. *Nat'l Union Fire Ins. Co. v. Denver & R.G.R. Co.*, 44 Utah 26, 137 P. 653, 653 (1913). The defendant argued that because National Union had not reimbursed the insured for the full amount of the damages suffered (the insured had not been made whole), the insured maintained an interest in the claim and the claim should have been brought by the insured. *Id.* at 654. The Utah Supreme Court rejected this argument. *Id.* at 654–57. The supreme court noted that a subrogating insurer acts as an assignee and thus is a real party in interest with a right to bring an action in its own name, whether or not there is a formal assignment issued. *See id.* at 655–56. The Utah Supreme Court established this insurer as real party in interest rule reasoning that even if no formal assignment had been issued, an equitable assignment had still arisen. *Id.* The Utah Supreme Court explained:

Not only does the [insurer as real party in interest] rule prevail when the assignment is absolute and complete and the assignee is the legal owner of the demand; it prevails with equal force in cases where the assignment is simply equitable in its character; and the assignee's title would not have been recognized in any form by a court of law under the old system but would have been purely equitable. Such assignee, being the real party in interest, must bring the action in his own name.

*Id.* Thus, even if the insurer “only obtained an equitable or a qualified interest as contradistinguished from an absolute and unqualified interest, still . . . it was the real

party in interest, so far its interest extended, and the action could be commenced and maintained in its name.” *Id.* at 655.

In the 1938 case *Baker v. Wycoff*, the Utah Supreme Court interpreted then recent changes in Utah’s worker’s compensation statute to determine if a subrogating insurer has a legal right to maintain a subrogation action. 79 P.2d 77, 80 (1938). The legislation interpreted in *Baker* stated that an “insurance carrier having paid the compensation *shall be subrogated to the rights* of such employee or his dependents to recover against such third person.” *Id.* 80–81 (emphasis added). However, the statute did not explain how a subrogation action should be commenced, nor in whose name the action should be pursued. *See id.* The supreme court concluded that, while the injured employee originally had a valid cause of action, “[a]ny right of action he had [was then] passed, under the statute, to the insurance carrier, who was by law subrogated to the rights of the workman.” *Id.* at 81. Thus, the Utah Supreme Court held that a subrogating insurer is the real party in interest in a subrogation claim with ownership of the claim and a right to bring the claim in its own name. *See id.*

The supreme court later revisited this same subrogation statute in *Johanson v. Cudahy Packing Co.* to determine whether the insured, along with the subrogating insurer, is also a real party in interest. 152 P.2d 98 (1944).<sup>2</sup> The supreme court seemed to agree with the proposition that if the insured has been made whole, the insured “would no longer have any interest in the cause of action,” and the insurer would remain the sole

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<sup>2</sup> *Johanson v. Cudahy Packing Co.* will be analyzed in much greater detail below in Section I(C) of this Brief.

party in interest. *Id.* at 103. However, if the insurer has not paid the full amount of the loss suffered, the injured insured retains an interest in the action. *Id.* at 104. Under such circumstances, both the insurer (“as equitable assignees of the insured,” *id.* at 104) and the injured insured are “co-owners of the insured's right of action.” *Id.* at 104.

As the twentieth century progressed, the Utah Supreme Court continually recognized a subrogating insurer's right to bring a subrogation action in its own name. In 1969, the Supreme Court decided *State Farm Mutual Insurance Co. v. Farmers Insurance Exchange*, 450 P.2d 458 (1969). In *State Farm*, the subrogating insurer brought a subrogation claim, in its own name, to recover for medical expenses it had paid on behalf of its insured. See *State Farm Mut. Ins. Co. v. Farmers Ins. Exch.*, 493 P.2d 1002, 1002–03 (1972) (providing factual background for the 1969 case). The tortfeasor argued that under Utah law, insurers could not pursue personal injury subrogation claims. *Id.* The supreme court dismissed this argument, allowing insurers to bring personal injury subrogation claims in the insurer's name. *State Farm*, 450 P.2d at 459.

In *Transamerica Insurance Co. v. Barnes*, Transamerica's insured was involved in a car accident where a passenger in the insured's car was injured. 505 P.2d 783 (Utah 1972). Based on the insurance policy, Transamerica paid monies on behalf of the injured passenger. Transamerica notified the tortfeasor of its subrogation rights, but the tortfeasor sought to bypass the insurance company by settling with the injured party. Transamerica brought a subrogation action in its own name to enforce its subrogation rights. While Transamerica did not prevail, the Utah Supreme Court did not question whether or not Transamerica had standing to bring the subrogation action in its own name.

In *Educators Mutual Insurance Association v. Allied Property & Casualty Insurance Co.*, Educators Mutual improperly pursued its subrogation rights through a fraud cause of action. 890 P.2d 1029 (Utah 1995). The Utah Supreme Court affirmed dismissing Educators Mutual's case based on fraud, noting that Educators Mutual should have pursued its rights through a subrogation action, noting "It is well settled that an insurer may bring a cause of action on behalf of its insured." *Id.* at 1031. The *Educators Mutual* Court then cited to both *State Farm Mutual Insurance Co. v. Farmers Insurance Exchange*, 450 P.2d 458 (Utah 1969)—a case where the insurance company brought its subrogation claim in its own name, not the name of its insured—and Utah Code Ann. § 31A-21-108 ("Subrogation actions may be brought by the insurer in the name of its insured."). *Educators Mutual*, 890 P.2d at 1031. The Utah Supreme Court did not indicate that the insurer had run afoul of either the real party in interest rule or standing rule by bringing the claim in its own name.

In *State Farm Mutual Automobile Insurance Co. v. Northwestern National Insurance Co.*, State Farm brought a subrogation action in its own name to recoup monies State Farm paid after its insured was involved in an automobile accident. 912 P.2d 983 (Utah 1996). The Utah Supreme Court explained, "Utah law clearly recognizes an insurer's right to bring a subrogation action on behalf of its insured against a tortfeasor [or the] insurance company which is primarily liable to . . . pay any claims on behalf of its insured." *Id.* at 985 (citing Utah Code Ann. § 31A-21-108). The Utah Supreme Court never questioned whether State Farm was the real party in interest with standing to bring the action in its own name.

*Sharon Steel Corp. v. Aetna Casualty & Surety Co.* involved multiple insurance companies and the liability of each to defend and pay for environmental clean-up of an industrial site. 931 P.2d 127 (Utah 1997). Aetna cross-claimed in its own name against AMICO and Hartford Accident & Indemnity Company, seeking subrogation and contribution for the defense costs it had paid. *Id.* at 131. Even though “an insurer’s subrogation right is derivative of the rights of its insured,” *id.*, the Utah Supreme Court did not require Aetna to seek subrogation in the name of its insured. Rather, the Court held that “Aetna has a valid cause of action for . . . subrogation.” *Id.* at 142.

Finally, consider the district court matter of *AGCS Marine Ins. Co. v. Adler Hot Oil Serv. Inc.*, No. 150800020 (Utah 8th Dist. Ct. filed Feb. 26, 2015). (A copy of the docket and complaint for that matter are included as Addend. D). In that matter numerous insurers sued in their own names when asserting their subrogation rights, clearly showing that both insurers and the courts have long interpreted Utah law as allowing an insurance company to bring a subrogation action in either the name of the insurance company or the name of their insured.

Under Utah law, a subrogating insurer is, and has long been, a real party in interest in a subrogation claim. As “the real party in interest . . . the action could be commenced and maintained in its name.” *Nat’l Union*, 137 P. at 655. As Utah subrogation law evolved, the Utah Supreme Court recognized that the insured could also be a real party in interest, or “co-owner” of the claim. *See Johanson*, 152 P.2d at 104. However, no case or statute has altered the long-standing rule that a subrogating insurer is a real party in

interest in a subrogation claim with the right to bring a subrogation action in its own name.

**C. THE UTAH COURT OF APPEALS MISAPPLIED *JOHANSON V. CUDAHY*.**

The Utah Court of Appeals relies primarily on the 1944 case, *Johanson v. Cudahy Packing Co.*, 152 P.2d 98 (Utah 1944), to support its proposition that EMIA cannot bring a subrogation action in its own name. See *Wilson*, 2016 UT App 38, ¶¶ 8–11, 368 P.3d 471. Specifically, the court of appeals relies on the following language from *Johanson*: ““it has been generally held that a suit at law to enforce a right of subrogation must, at common law, be brought in the name of the insured, rather than by the insurance company in its own name and right.”” *Wilson*, 2016 UT App 38, ¶ 10, 368 P.3d 471 (quoting *Johanson*, 152 P.2d at 104). This reliance on *Johanson* is misplaced primarily because the portion of *Johanson* quoted by the court of appeals is not the law the *Johanson* Court adopted; specifically, the *Johanson* Court first analyzed the different positions taken by other states (including the position quoted by the court of appeals) before adopting the completely contrary position that, under Utah law, both the insurer and insured are real parties in interest and both may bring the cause of action in their own name. *Johanson*, 152 P.2d at 104–105.

Because the *Johanson* decision is so important to the court of appeal’s decision in this matter, this Brief will address in depth the analysis and holding of *Johanson v. Cudahy Packing Company*. This Brief will then individually address each instance in

which the court of appeals relied on *Johanson*. Finally, this Brief will show how the holding of *Johanson* supports EMIA's position.

1. Analysis and Holding of *Johanson v. Cudahy Packing Co.*

*Johanson* is a demurrer case in which the court was required to determine the parties' rights to bring a wrongful death cause of action in accordance with Utah's 1933 worker's compensation subrogation statute. Already established and accepted by the *Johanson* Court was the Utah rule that the subrogating insurer is a real party in interest with right to bring the claim in its own name. *Id.* at 100, 103–05. The primary question before the *Johanson* Court was whether the subrogating insurer is the sole party in interest or if the injured insured also retained a right to the claim and was also a party in interest. *Id.*

The factual background to *Johanson* is as follows. Robert Johanson died in an industrial accident in 1938. *Id.* at 100. His parents applied for and were awarded industrial compensation for the death of their son in accordance with Utah's worker's compensation statute. *Id.* While the insurance carrier who paid the award could have brought a subrogation action against defendants in its own name, the insurer waived its right to bring the action. *Id.* at 104. Johanson's parents then brought a wrongful death cause of action themselves in their own names. *Id.* The defendant tortfeasor argued that, because the parents received a compensation award from the insurer, the insurer was the sole party in interest and the Johansons "are not the proper parties to bring this action." *Id.* at 102. Defendants argued that only the subrogating insurer who had paid the award could bring the claim. *Id.*

At the time of the *Johanson* decision, there were three primary views the different states had adopted concerning in whose name a subrogation action should be brought. See Michael C. Ferguson, *The Real Party in Interest Rule Revitalized: Recognizing Defendant's Interest in the Determination of Proper Parties Plaintiff*, 55 CAL. L. REV. 1452, 1479–80 (1967), <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2841&context=californialawreview>. The first view was that “actions on subrogated claims must be prosecuted by the subrogee [insurer] alone.” *Id.* The second view was that “such actions [must] be prosecuted by the subrogor [insured] alone.” *Id.* at 1480. The final view was that “either the subrogor or the subrogee [may] prosecute such actions.” *Id.* In analyzing the issue of whether or not an injured insured is a real party in interest, the *Johanson* Court reviewed other jurisdictions’ rulings to see how other states had addressed this issue, *Johanson*, 152 P.2d at 102–05, and the *Johanson* Court examined all three of the above views. *Id.*

The first view, that the subrogee/insurer alone was the real party in interest, was embraced by Justice McDonough in the dissenting opinion. *Id.* at 110–111 (J. McDonough, dissenting). Justice McDonough opined that an insurer’s subrogation rights result in “giving control of the cause of action [to the] insurance carrier. It results in the . . . insurance carrier becoming the real party in interest . . . . The election by the employee [to accept compensation from the insurer] divests him of any legal interest in the cause of action.” *Id.* at 110 (J. McDonough, dissenting). The *Johanson* Court did not adopt this view.

The second view, that the subrogor/insured was the sole party in interest, was analyzed but not adopted in the majority opinion. *Id.* at 103–04. The *Johanson* Court noted that cases from several states support this rule. *Id.* at 103.

These cases proceed upon the theory that the insured is the trustee for the insurer and that the third party has a right not to have the cause of action against him split up so that he is compelled to defend two or more actions. This splitting of the cause of action is avoided by having the suit brought in the name of the insured for the benefit of himself and as trustee for the insurance carrier.

*Id.* at 103–04. Under this rule, the *Johanson* Court noted “it has been generally held that a suit at law to enforce such right of subrogation must, at common law, be brought in the name of the insured, rather than by the insurance company in its own name and right.” *Id.* at 104. While this view was contrary to Utah’s precedence (that a subrogating insurer is the real party in interest in a subrogation claim, see *Baker v. Wycoff*, 79 P.2d 77, 81 (Utah 1938); *Nat’l Union*, 137 P. at 655), analysis of this view supported the *Johanson* Court’s final holding that the insured should maintain at least some rights to the cause of action.

The view adopted by the *Johanson* Court was that both the subrogor and the subrogee are real parties in interest. *Johanson*, P.2d at 105. This view was analyzed at *Johanson*, 152 P.2d at 104–105. The *Johanson* Court began this line of analysis stating, “There are cases holding that under statutes similar to Utah statutes relating to proper and necessary parties plaintiff both the insured and the insurance carrier must be joined.” *Id.* at 104. In support of this view, the *Johanson* Court stated, “insurers which, by subrogation, are equitable assignees . . . not only are proper parties plaintiff, but must be joined as such.” *Id.* at 104 (quoting 96 A.L.R. 884–89). Under the view adopted by the

*Johanson* Court, both the insured and insurer were “co-owners of the insured’s right of action.” *Id.* at 104.

In applying this view to the facts of the case, the *Johanson* Court held, “When the insurance carrier declined to bring its action and executed a waiver thereof, the dependents were not compelled to forego suit. They have an interest in the recovery and can bring suit to enforce it.” *Id.* at 104. The supreme court continued, “The failure on the part of the plaintiffs to make the [missing party] a party plaintiff, or if it refused to join, make it a party defendant, is at the most a defect in parties plaintiff. Such a defect is waived unless raised.” *Id.* at 104–05. The rule adopted by the *Johanson* Court is that both the insurer and insured are real parties in interest. *Id.* Both parties should be joined as parties plaintiff. *Id.* If one of the parties is not joined, “the defendant, by making timely objection, could have had the [missing party] made a party.” *Id.* at 107. Failure to join the missing party is a defect that, unless raised, is waived. *Id.* at 104–05.

## 2. The Court of Appeals Misapplied *Johanson v. Cudahy Packing Co.*

The court of appeals misapplied the ruling in *Johanson*. It took one view analyzed by the *Johanson* Court and incorrectly applied that view as Utah law. This mistake is completely at odds with the actual holding in *Johanson*, is inconsistent with the development of Utah’s subrogation law prior to *Johanson*, and ignores the development of subrogation case law subsequent to *Johanson*. See, e.g., *Sharon Steel Corp. v. Aetna Cas. & Sur. Co.*, 931 P.2d 127 (Utah 1997) (allowing insurer to bring subrogation claim in own name); *State Farm Mut. Auto. Ins. Co. v. Nw. Nat. Ins. Co.*, 912 P.2d 983 (Utah 1996) (same); *Transamerica Ins. Co. v. Barnes*, 505 P.2d 783 (Utah 1972) (same); *State*

*Farm Mut. Ins. Co. v. Farmers Ins. Exch.*, 450 P.2d 458 (Utah 1969) (same); *Nat'l Farmers Union Prop. & Cas. Co. v. Farmers Ins. Grp.*, 377 P.2d 786 (Utah 1963) (same).

The court of appeals' primary application of *Johanson* was to cite *Johanson*'s analysis of the subrogor/insured as sole party in interest view, a view not adopted by the *Johanson* Court. Under this rejected view, "it has been generally held that a suit at law to enforce a right of subrogation must, at common law, be brought in the name of the insured, rather than by the insurance company in its own name and right." *Wilson*, 2016 UT App 38, ¶ 10, 368 P.3d 471 (quoting *Johanson*, 152 P.2d at 104). However, the *Johanson* Court rejected this view. Instead, the *Johanson* Court adopted the view that both the insurer and insured are real parties in interest, both are co-owners of the claim, and both may bring the action in their own name. *Johanson*, 152 P.2d at 104–105.

The court of appeals cited *Johanson* for the policy concern that allowing "an insurer to sue in its own name, except where it has fully indemnified the insured, could compel the wrongdoer to 'defend a multitude of suits' against multiple insurance companies, the insured, and/or the insured's dependents or heirs." *Wilson*, 2016 UT App 38, ¶¶ 10, 12 n.6, 368 P.3d 471 (citing *Johanson*, 152 P.2d at 103). However, the *Johanson* Court addressed how this concern is resolved under the rule adopted by Utah. Specifically, the *Johanson* Court concluded that under the Utah rule (both insured and insurer are real parties in interest), the multiple suits problem is solved through joinder.

There is but a single cause of action involved . . . . That the insurers as equitable assignees of the insured are interested therein to the extent of their payment to the insured . . . does not create other causes of action, legal or

equitable, against defendants. It is still one cause of action, a single controversy, owned in common by the insured and the insurers. . . . The plaintiffs herein, co-owners of the insured's right of action, were not only authorized by the state law to sue jointly as they did, but were compelled to do so. One compelled to join and joined in an action, and having a substantial interest therein, is not a nominal, but a necessary or indispensable party.

*Id.* at 104. The supreme court explained how joinder protects a defendant against multiple suits. "The one and only interest of [defendant] is that the suit be brought in the names of those interested in it so that he will not later be made to defend a second suit for the same wrong." *Id.* at 107. The supreme court explained that this "protection [against multiple suits] is insured here by the fact that the defendant, by making timely objection, could have had the [missing party] made a party." *Id.* at 107. Should the missing party not be joined, that "is at the most a defect in parties plaintiff. Such a defect is waived unless raised." *Id.* at 105. The multiple suits problem highlighted by the court of appeals is solved, under Utah law, through joinder.

Finally, the court of appeals notes that in workers' compensation cases such as *Johanson*, the legislature has granted explicit rights to the subrogating insurer, including "expressly grant[ing] insurers . . . the authority to bring such actions in their own names," *Wilson*, 2016 UT App 38, ¶ 8 n.4, 368 P.3d 471, and "expressly provid[ing] that the insurer is to be reimbursed before the employee or the employee's heirs." *Id.* ¶ 11 n.5. While both of these rights do appear in current day statutes, neither right was expressly granted in the 1933 version of the statute interpreted by the *Johanson* Court. Rather, the *Johanson* Court relied on "general principles of subrogation as affected by statutes

governing pleading”—rather than express statutory language—in holding that both the insurer and insured are real parties in interest. *Johanson*, 152 P.2d at 104 (“when . . . no special rules for maintaining the [subrogation] action are prescribed, the proceeding to enforce the rights gained by subrogation will be controlled by general principles of subrogation as affected by statutes governing pleading.”).

### 3. The Holding of *Johanson* Supports EMIA’s Position.

Under *Johanson*’s holding, both EMIA and Jessica Wilson (or Ms. Wilson’s estate) are real parties in interest in this suit. Either may maintain the action in their own name. To protect himself from multiple suits, the defendant could have had Ms. Wilson’s estate made a party to the proceedings. However, no party sought to have Ms. Wilson’s estate joined in these proceedings. Failure to join Ms. Wilson’s estate “is at the most a defect in parties plaintiff. Such a defect is waived unless raised.” *Johanson*, 152 P.2d at 105. It is important to note that the parties at the trial court level did consolidate the wrongful death proceeding with the subrogation proceeding. As such, consolidation provided the defendant with protection from multiple suits in this matter.

The court of appeals misapplied *Johanson* by relying on language that the *Johanson* Court did not adopt as Utah law. The actual holding of *Johanson*, that both the insurer and insured are real parties in interest and both may bring the cause of action in their own name, *Johanson*, 152 P.2d at 104–105, supports EMIA’s position. EMIA is a real party in interest and may maintain a subrogation action in its own name.

**D. THE COURT OF APPEALS HAS CREATED A REQUIREMENT THAT WOULD MAKE IT IMPOSSIBLE FOR AN INSURER TO RECOVER IN INSTANCES WHERE AN INSURED PASSES AWAY FROM THE ACTIONS OR INACTIONS OF A TORTFEASOR.**

Near the conclusion of its opinion, the court of appeals stated, “EMIA should have brought its personal injury action in the name of the estate . . . .” *Wilson*, 2016 UT App 38, ¶ 12, 368 P.3d 471. However, such a requirement ignores § 31A-21-108 and Utah case law which allows an insurer to bring a subrogation action in its own name, and is untenable for two reasons. First, it creates a situation where an insurer would have to initiate a probate proceeding and hope for the assistance of a personal representative who would likely be unwilling to aid the insurer in its efforts to receive reimbursement; and second, the requirement runs contrary to rules of statutory interpretation.

First, by requiring an insurer to bring an action in the name of the estate of its insured, the court of appeals has created a situation where an insurer will likely never be able to recover if its insured passes away as a result of injuries sustained by the actions or inactions of a third party. Utah code states in regard to survival actions

A cause of action arising out of personal injury to a person, or death caused by the wrongful act or negligence of a wrongdoer, does not abate upon the death of the wrongdoer or the injured person. *The injured person, or the personal representatives or heirs of the person who died*, has a cause of action against the wrongdoer or the personal representatives of the wrongdoer.

Utah Code Ann. § 78B-3-107 (emphasis added). Given the language of § 78B-3-107, which only allows a survival action to be brought by the injured person, personal representative, or heirs of the deceased, and the court of appeals’ reasoning, an insurer would be required to initiate a probate proceeding and pursue its claims with the

assistance of a personal representative who would likely be a family member of the deceased. If the present matter illustrates anything it is that the interests of the family of a deceased individual and that of the insurer are often conflicted. A personal representative or family member would have little incentive to assist an insurer if doing so would potentially reduce the amount of assets or funds available for the person acting as personal representative, or other family members, to receive. Creating such a requirement was unnecessary given § 31A-21-108 allows an insurer to bring a subrogation action in its own name.

Second, requiring an insurer to sue in the name of the estate of its insured runs contrary to normal rules of statutory interpretation. The Utah Supreme Court has stated in regard to statutory interpretation, there is a “general rule that [the court] should construe statutory provisions so as to give full effect to all their terms, where possible.” *Schurtz v. BMW of North America, Inc.*, 814 P.2d 1108, 1112 (Utah 1991). Further, “[w]hen interpreting statutes, we look first to the statute’s plain language with the primary objective of giving effect to the legislature’s intent.” *Martinez v. Media-Paymaster Plus*, 2007 UT 42, ¶ 46, 164 P.3d 384. Also, “[w]e presume that the legislature used each word advisedly’ and read ‘each term according to its ordinary and accepted meaning.’” *Id.* (quoting *State v. Barrett*, 2005 UT 88, ¶ 29, 127 P.3d 682). Finally, “[s]tatutes should be read as a whole and their provisions interpreted in harmony with related provisions and statutes.” *Martinez*, 2007 UT 42, ¶ 46, 164 P.3d 384. The approach utilized by the court of appeals ignores Utah Code Ann. § 31A-21-108, and allows § 78B-3-107 to nullify, or swallow, § 31A-21-108. Such an approach runs contrary to the requirement

that “[s]tatutes should be read as a whole and their provisions interpreted in harmony with related provisions and statutes.” *Martinez*, 2007 UT 42, ¶ 46, 164 P.3d 384.

Another approach, which would have given full effect to § 31A-21-108 and § 78B-3-107, would have been to allow an insurer to recover those damages pertaining to its subrogation claim, pursuant to Utah Code Ann. § 31A-21-108, while allowing heirs to recover those damages available pursuant to Utah Code Ann. § 78B-3-107, as the damages that each respective party would be entitled to differ.

#### **E. THE COURT OF APPEALS IGNORED POLICY IMPLICATIONS.**

The court of appeals has also failed to consider serious policy implications. First, as was noted above, it is unlikely insurers will receive reimbursement if an insured passes away because of the actions or inactions of a third-party tortfeasor if an insurer cannot bring a subrogation action in its own name. In order to protect their interests, insurers will likely add language to their policies excluding coverage for injuries sustained by an insured that were caused by a third-party, if the insured subsequently passes away as a result of the injuries sustained. This would inappropriately shift the financial burden from the tortfeasor to the family of the insured and/or medical providers. Simply put, the Utah Court of Appeals’ opinion disincentivizes insurers providing coverage for most catastrophic accidents.

Second, even if insurers do not add exclusionary language to their policies, it is likely that insurance premiums will increase substantially. When actuaries for insurance companies determine premiums for insurance policies they generally take into account the right of the insurer to subrogate against a tortfeasor who has caused the injuries of its

insured. If an insurer is effectively barred from maintaining a subrogation action because the insured has died as a result of the injuries sustained, premium rates would increase since there would be no hope for reimbursement. This is unfair to insureds who would be forced to bear the burden of increased premiums.

Finally, there are instances where it makes good sense procedurally to allow insurers to bring subrogation actions in their own names. This is especially true in multi-party actions. In those cases there may be multiple insurers seeking subrogation, and Plaintiffs seeking redress for tort claims. All of the parties would potentially be suing under the same name. For example, in matters like *AGCS Marine Ins. Co. v. Adler Hot Oil Serv. Inc.*, No. 150800020 (Utah 8th Dist. Ct. filed Feb. 26, 2015), where there are several parties involved, forcing the insurers to sue in the names of their insureds creates confusion and an organizational nightmare for the district court. All of which is avoided by simply allowing insurers to bring their subrogation actions in their own names.

**F. *HILL AND CEDERLOFF DO NOT STAND FOR THE PROPOSITION THAT AN HEIR HAS A SUPERIOR RIGHT TO RECOVER IN A PERSONAL INJURY CLAIM.***

In footnote 6 of its opinion, the Utah Court of Appeals states

EMIA asserts that the correct approach would be to allow the insurer and the heirs to pursue separate claims to recover their respective shares of damages arising from a personal injury claim. Such an approach would . . . *potentially compromise the heirs' superior right to recover their share of the personal injury claim, see Hill [v. State Farm Mut. Auto. Ins. Co., 765 P.2d 864, 866 (Utah 1988)]. See Cederloff v. Whited, 169 P.2d 777, 780 (Utah 1946).*

*Wilson*, 2016 UT App 38, ¶ 12 n.6, 368 P.3d 471 (emphasis added). However, neither *Hill* nor *Cederloff* stand for the proposition that heirs have a superior right of recovery.

The portion of *Hill* cited to by the Utah Court of Appeals provides a factual background; the general principle that “Subrogation is an equitable doctrine . . . [which] can be modified by contract”; and the obstacles associated with determining whether or not an insured has been made whole by a settlement when equitable subrogation principles apply rather than contractual principles. 765 P.2d at 866.<sup>3</sup> *Hill* simply does not state that heirs have a superior right to recovery.

In regard to *Cederloff*, that matter did not deal with wrongful death heirs, nor did it address the issue of priority of recovery between heirs and a subrogated insurer. Instead, the Utah Supreme Court considered whether or not an insured who had received insurance proceeds could maintain an action in the insured’s name for amounts that had been paid by the insurer in behalf of the insured. *Cederloff*, 169 P.2d at 777–78. Therefore, similar to *Hill*, *Cederloff* does not stand for the proposition that heirs have a superior right to recovery over an insurer.

## II. THE UTAH COURT OF APPEALS APPLIED RULE 17 OF THE UTAH RULES OF CIVIL PROCEDURE INCORRECTLY.

Even if the Utah Court of Appeals correctly interpreted Utah Code Ann. § 31A-21-108, it misapplied Rule 17 of the Utah Rules of Civil Procedure. Rule 17 states

*No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or*

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<sup>3</sup> It should be noted that EMIA was subrogating in accordance with the contractual terms contained in its insurance policy with Jessica Wilson. As such, much of the doctrine contained in *Hill* is inapplicable as the *Hill* Court applied equitable principles of subrogation in that matter. *See Hill*, 765 P.2d at 867.

substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

U.R.C.P. 17(a). (emphasis added).

Despite the clear language in Rule 17, in its opinion, the Utah Court of Appeals stated, “We conclude that EMIA lacked standing to pursue a subrogation action against Krueger in its own name. Thus, the trial court erred in dividing the Wilsons’ settlement with EMIA. Accordingly, we reverse the trial court’s order and remand *with instructions for the trial court to dismiss EMIA’s claims . . .*” *Wilson*, 2016 UT App 38, ¶ 13, 368 P.3d 471. (emphasis added). EMIA’s ability to bring a subrogation action in its own name is not a standing issue, rather a real party in interest issue governed by Rule 17, making dismissal inappropriate. While EMIA believes that it was proper to bring its subrogation action in its own name, even if it could not, EMIA would have had standing had it brought its subrogation action in the name of its insured. *See Wilson*, 2016 UT App 38, ¶ 12, 368 P.3d 471 (“EMIA should have brought its personal injury action in the name of the estate or intervened in the Wilsons’ action against Krueger.”). Therefore, pursuant to Rule 17, the Utah Court of Appeals should not have ordered that EMIA’s claims be dismissed.

The problem with this remedy is illustrated in *AGCS Marine Ins. Co. v. Adler Hot Oil Serv. Inc.*, No. 150800020 (Utah 8th Dist. Ct. filed Feb. 26, 2015). In that matter several insurers sued in their own names when asserting their subrogation rights. Shortly after the *Wilson* opinion was entered, the insurers in that matter immediately filed motions to change the named party in interest to their insureds. However, the holding of

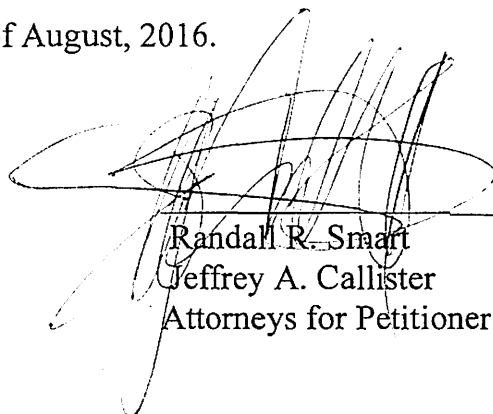
*Wilson* may not allow for that change, but may require dismissal of the subrogating insurers' actions. Such a result is unfair and inappropriate pursuant to Rule 17.

Because EMIA's ability to bring a subrogation action in its own name is not a standing issue, rather a real party in interest issue governed by Rule 17, dismissal was inappropriate.

### CONCLUSION

Because EMIA had standing to bring its action in its own name, the decision of the Utah Court of Appeals should be reversed. Further, even if § 31A-21-108 does not give EMIA standing to bring an action in its own name, the court of appeals' decision requiring the trial court to dismiss EMIA's action should be reversed as it is contrary to Rule 17 of the Utah Rules of Civil Procedure.

DATED this 30<sup>th</sup> day of August, 2016.



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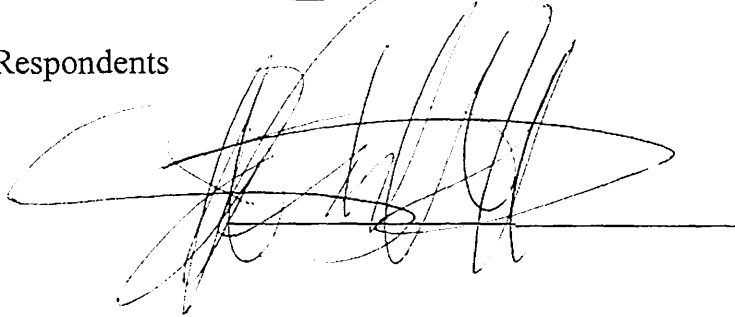
## CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of August, 2016, I caused to be served the foregoing BRIEF OF APPELLANT/PETITIONER upon the parties of record in this proceeding set forth below by the method indicated:

Jack C. Helgesen (1451)  
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☐ Hand Delivery

Attorneys for Appellees/Respondents

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the attorney or the person certifying service.

# ADDENDUM A

THE UTAH COURT OF APPEALS

EVERETT P. WILSON JR. AND DARLA WILSON,  
Appellants,

v.

EDUCATORS MUTUAL INSURANCE ASSOCIATION,  
Appellee.

Opinion

No. 20150150-CA

Filed February 25, 2016

Fourth District Court, Provo Department

The Honorable Samuel D. McVey

No. 110400083

Jack C. Helgesen and Craig Helgesen, Attorneys  
for Appellants

Randall R. Smart and Jeffrey A. Callister, Attorneys  
for Appellee

SENIOR JUDGE PAMELA T. GREENWOOD authored this Opinion, in  
which JUDGES MICHELE M. CHRISTIANSEN and KATE A. TOOMEY  
concurred.<sup>1</sup>

GREENWOOD, Senior Judge:

¶1 Everett P. Wilson Jr. and Darla Wilson appeal the trial court's order awarding a portion of interpleaded funds to Educators Mutual Insurance Association (EMIA). We reverse and remand.

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1. Senior Judge Pamela T. Greenwood sat by special assignment as authorized by law. *See generally* Utah R. Jud. Admin. 11-201(6).

## BACKGROUND

¶2 On September 19, 2010, the Wilsons' daughter, Jessica, was killed after having been struck by a vehicle driven by Cade Krueger. EMIA, Jessica's insurer, paid nearly \$79,000 in medical expenses on her behalf. No personal representative was sought or appointed for Jessica's estate.

¶3 The Wilsons filed a wrongful death claim against Krueger on January 12, 2011, seeking damages for the loss, love, and affection of their daughter and for funeral expenses. After several years of discovery and litigation, the Wilsons reached a tentative settlement with Krueger's insurer for the \$100,000 limit on his insurance policy.

¶4 On January 22, 2014, EMIA filed a "Complaint for Subrogation Claim" against Krueger, seeking reimbursement for medical expenses it had paid on Jessica's behalf, with accrued interest.<sup>2</sup> EMIA asserted its subrogation claim pursuant to the terms of its insurance contract with Jessica. All parties agreed to consolidate the cases, and Krueger filed an interpleader counterclaim against both the Wilsons and EMIA, in which his insurer agreed to interplead the \$100,000 policy limit with the court. EMIA and the Wilsons agreed to accept the \$100,000 in settlement of their claims against Krueger but disagreed as to how the funds should be distributed. EMIA and the Wilsons agreed to dismiss Krueger from the lawsuit with prejudice. The trial court ordered Krueger's insurer to deposit the \$100,000 with the court and gave the parties the opportunity to file briefs in support of their competing claims to the funds.

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2. EMIA had initially asserted a lien against the Wilsons' wrongful death claim but later acknowledged that it could not assert such a lien "against payments to the heirs of a deceased on a wrongful death claim."

*Wilson v. Educators Mutual Insurance*

¶5 The Wilsons asserted that they were entitled to the entire \$100,000 settlement. They raised a number of arguments in support of this position, including that they have “superior equity” over a subrogated insurer and are therefore entitled to be “made whole” before the insurer is paid, that EMIA had no legal right to pursue a cause of action against Krueger in its own name, and that EMIA’s action was barred by a three-year statute of limitations.

¶6 The trial court ultimately rejected the Wilsons’ arguments and divided the settlement money equally between the Wilsons and EMIA after finding that each party had incurred damages in excess of \$100,000. However, in acknowledgment that the Wilsons’ efforts to obtain the settlement had been disproportionate to those of EMIA, the trial court determined that the Wilsons were entitled to \$25,817.69 of EMIA’s award to reimburse them for a portion of their attorney fees. Accordingly, the trial court awarded \$75,817.69 to the Wilsons and \$24,182.31 to EMIA. The Wilsons now appeal.

ISSUE AND STANDARD OF REVIEW

¶7 The Wilsons raise a number of arguments in support of their assertion that the trial court erred in awarding EMIA a portion of the settlement. Because we agree with the Wilsons that EMIA lacked standing to bring a subrogation action in its own name rather than in the name of Jessica or Jessica’s estate, we do not address the Wilsons’ other arguments. As this question involves the interpretation of a statute, as well as decisional precedents, we review the trial court’s ruling for correctness. See *MacFarlane v. Utah State Tax Comm’n*, 2006 UT 25, ¶ 9, 134 P.3d 1116 (“A matter of statutory interpretation [is] a question of law that we review on appeal for correctness.” (alteration in original) (citation and internal quotation marks omitted)); *In re Adoption of A.F.K.*, 2009 UT App 198, ¶ 16, 216 P.3d 980 (explaining that “issues that require interpretation of

prior. decisional precedents” are “questions of law that are reviewed for correctness” (citation and internal quotation marks omitted)).

## ANALYSIS

¶8 Utah’s subrogation statute provides, “Subrogation actions may be brought by the insurer in the name of its insured.” Utah Code Ann. § 31A-21-108 (LexisNexis 2014). EMIA asserts that the use of the word “may” implies that the insurer *may* bring the action in the name of the insured but is not required to do so and may instead choose to bring the action in its own name. *See State v. Gallegos*, 967 P.2d 973, 978 (Utah Ct. App. 1998) (“[T]he term ‘may’ is generally construed to be permissive and not mandatory . . . .” (citation and internal quotation marks omitted)). We assume, without deciding, that the statute’s use of the permissive “may” allows for the possibility that bringing an action in the name of the insured is not the exclusive manner for an insurer to pursue a subrogation claim.<sup>3</sup> Nevertheless, the

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3. Though we assume for purposes of our analysis that the permissive “may” applies to the manner in which the insurer brings the action, i.e., in its own name or in the name of another, we recognize that the legislature may have intended the word “may” to grant the insurer discretion only as to whether to bring the action at all. *Cf. Thorpe v. Washington City*, 2010 UT App 297, ¶¶ 23–24, 243 P.3d 500 (rejecting the assertion that language providing that “[a] final action or order of [a municipal employee] appeal board may be appealed to the Court of Appeals” could be interpreted as permitting a party to appeal in another venue, explaining that the language “is not permissive in the sense that the employee may seek review in the court of appeals if he likes but may complain in some other judicial venue if he prefers” but that, “[o]n the contrary, the statute is (continued...)”) (continued...)

*Wilson v. Educators Mutual Insurance*

statute contains no language *granting* an insurance company the right to bring a subrogation action in its own name.<sup>4</sup> So even assuming that bringing an action in the name of the insured is not, statutorily, the exclusive method for bringing suit, there must be some legal basis, apart from the statute as currently written, authorizing the insurer to bring the action in its own name. Cf. *Dehm v. Dehm*, 545 P.2d 525, 528 (Utah 1976) (providing that permissive language in a statute "does not foreclose the right of a person" to pursue a remedy "by any other means *provided by law*" (emphasis added)). Our review of Utah case law convinces us that, with the possible exception of an insurer who has fully indemnified the insured for all damages for which the wrongdoer could be held liable, see *Johanson v. Cudahy Packing Co.*, 152 P.2d 98, 103 (Utah 1944), no

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(...continued)

clear that the only court to which the employee may seek initial recourse . . . is the Utah Court of Appeals" (first alteration in original)).

4. Conversely, the legislature *has* expressly granted insurers seeking reimbursement for the payment of workers' compensation benefits the authority to bring such actions in their own names:

If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier:

- (i) shall become trustee of the cause of action against the third party; and
- (ii) may bring and maintain the action *either in its own name or* in the name of the injured employee, or the employee's heirs or the personal representative of the deceased.

Utah Code Ann. § 34A-2-106(2)(a) (LexisNexis 2011) (emphasis added).

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independent right exists for an insurer to seek subrogated damages in its own name.

¶9 First, EMIA does not have a direct cause of action against Krueger. "An insurer's subrogation right to recover from a responsible third party the amount the insurer paid to or on behalf of its insured derives from the insurance contract between the insurer and the insured," and its causes of action against that third party are limited "to those rights or causes of action that the insured possesses against the third party." *Bakowski v. Mountain States Steel, Inc.*, 2002 UT 62, ¶ 23, 52 P.3d 1179. "[E]ven though the insurance company is subrogated to a part of the claim of the plaintiff, against the defendant, that does not create another cause of action and there can only be one suit to recover on that cause of action." *Cederloff v. Whited*, 169 P.2d 777, 780 (Utah 1946).

¶10 Further, "it has been generally held that a suit at law to enforce [a] right of subrogation must, at common law, be brought in the name of the insured, rather than by the insurance company in its own name and right." *Johanson*, 152 P.2d at 104 (citation and internal quotation marks omitted); *see also* Utah R. Civ. P. 17(a) ("Every action shall be prosecuted in the name of the real party in interest. . . . [A] party authorized by statute may sue in that person's name . . . ."). "The reason for the rule is that the wrongful act" of the third party being sued "is single and indivisible, and gives rise to but one liability." *Johanson*, 152 P.2d at 103. Permitting an insurer to sue in its own name, except where it has fully indemnified the insured, could compel the wrongdoer to "defend a multitude of suits" against multiple insurance companies, the insured, and/or the insured's dependents or heirs. *Id.*

¶11 Furthermore, "[c]onsiderations of reason and policy impel the conclusion that the plaintiff, the one who has suffered the injury and damage, should have basic ownership and control of

*Wilson v. Educators Mutual Insurance*

his cause of action." *Lanier v. Pyne*, 508 P.2d 38, 40 (Utah 1973). Even under statutory schemes that give the insurance carrier's right to reimbursement priority over the injured party's right to damages,<sup>5</sup> our supreme court has concluded "that the rights conferred upon the insurance carrier" to pursue an action against a third party "should be regarded as secondary to the plaintiff's interest" in controlling the cause of action. *Id.* Thus, at least where the insured or the insured's estate retains some interest in the potential damages, an insurance company cannot pursue a subrogation action in its own name.

¶12 After Jessica's death, her cause of action for personal injury passed to her estate by virtue of Utah's survival statute. See Utah Code Ann. § 78B-3-107(1)(a) (LexisNexis Supp. 2015) ("A cause of action arising out of personal injury to a person, or death caused by the wrongful act or negligence of a wrongdoer, does not abate upon the death of the . . . injured person. . . . [T]he personal representatives or heirs of the person who died, [have] a cause of action against the wrongdoer . . . ."). The survival statute grants the personal representatives or heirs of the injured decedent the right to pursue both "special and general damages"

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5. In subrogation actions where the insurer has paid workers' compensation benefits, such as in *Johanson v. Cudahy Packing Co.*, 152 P.2d 98 (Utah 1944), and *Lanier v. Pyne*, 508 P.2d 38, 40 (Utah 1973), the Workers' Compensation Act expressly provides that the insurer is to be reimbursed before the employee or the employee's heirs. Utah Code Ann. § 34A-2-106(5); see also *Anderson v. United Parcel Serv.*, 2004 UT 57, ¶¶ 8-13, 96 P.3d 903. But in a case such as this, where the expenses paid by the insurer were not connected to a workers' compensation claim, "in the absence of express terms to the contrary, the insured must be made whole before the insurer is entitled to be reimbursed from a recovery from the third-party tort-feasor." *Hill v. State Farm Mut. Auto. Ins. Co.*, 765 P.2d 864, 866 (Utah 1988).

against the wrongdoer. *Id.* General damages include damages for the insured's pain and suffering, *Balderas v. Starks*, 2006 UT App 218, ¶ 16 n.5, 138 P.3d 75, which would have been separate from the medical expenses paid by EMIA on Jessica's behalf. Since Jessica's estate would presumably have been entitled to at least some portion of the damages recoverable in a personal injury action, EMIA should have brought its personal injury action in the name of the estate or intervened in the Wilsons' action against Krueger.<sup>6</sup> Instead, it filed an action in its own name, which Utah law does not permit. Because EMIA lacked standing to pursue a claim against Krueger in its own name, the trial court erred in awarding EMIA a portion of the interpleaded funds.

### CONCLUSION

¶13 We conclude that EMIA lacked standing to pursue a subrogation action against Krueger in its own name. Thus, the trial court erred in dividing the Wilsons' settlement with EMIA. Accordingly, we reverse the trial court's order and remand with instructions for the trial court to dismiss EMIA's claims and award all of the interpleaded funds to the Wilsons.

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6. EMIA asserts that the correct approach would be to allow the insurer and the heirs to pursue separate claims to recover their respective shares of damages arising from a personal injury claim. Such an approach would unnecessarily subject the defendant to multiple suits for the same conduct, *see Johanson*, 152 P.2d at 103, and potentially compromise the heirs' superior right to recover their share of the personal injury claim, *see Hill*, 765 P.2d at 866. *See Cederloff v. Whited*, 169 P.2d 777, 780 (Utah 1946).

# ADDENDUM B

The Order of Court is signed below:  
Dated: February 06, 2015 /s/ Samuel D. McVey  
09:30:23 AM District Court Judge



Randall R. Smart (2983)  
Jeffrey A. Callister (9962)  
Smart, Schofield, Shorter & Lunceford  
A Professional Corporation  
5295 South Commerce Drive, Suite 200  
Murray, Utah 84107  
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Attorneys for Plaintiff Educators Mutual Insurance Association

DISTRICT COURT OF THE STATE OF UTAH  
FOURTH JUDICIAL DISTRICT  
UTAH COUNTY - PROVO DEPARTMENT

EVERETT P. WILSON JR., DARLA  
WILSON, AND INGE VALDMANN

and

EDUCATORS MUTUAL INSURANCE  
ASSOCIATION  
Plaintiff(s)

vs.

CADE M. KRUEGER  
Defendant(s)

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER REGARDING ALLOCATION OF  
INTERPLEADER AMOUNT DEPOSITED WITH  
THE COURT and Order of Consolidation  
*Modified by the Court as Underlined*

140400111

Case Number 110400083  
Judge Samuel D. McVey

The above-entitled matter came before the Court on January 27, 2015, Judge Samuel D. McVey presiding. Plaintiffs Everett P. Wilson, Jr. and Darla Wilson (Everett P. Wilson, Jr. and Darla Wilson are referred to collectively as the "Wilsons" where appropriate) were present and represented by counsel, Jack C. Helgesen of Helgesen, Houtz & Jones, P.C. Plaintiff Educators Mutual Insurance Association ("EMIA") was represented by counsel, Jeffrey A. Callister of Smart, Schofield, Shorter & Lunceford, a professional corporation. The Court, after reviewing EMIA's

Brief Regarding Allocation of Interpleader Amount Deposited with the Court, Response to Brief on Interpleaded Funds; the Wilsons' Motion for Summary Judgment, Brief on Allocation Interpleaded Funds and Memorandum in Support of Motion for Summary Judgment, Opposition to Educators Mutual Insurance Association's Brief Regarding Allocation of Interpleader Amount, and Reply Memorandum in Support of Motion for Summary Judgment, and after hearing oral argument and otherwise being fully advised, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. EMIA and the Wilsons filed separate claims against the Defendant, Cade M. Krueger ("Defendant"), based on losses suffered from the death of Jessica Wilson when Defendant struck her with his vehicle.
2. Jessica Wilson later died from the injuries she incurred.
3. EMIA was the medical insurer of Jessica Wilson at all times relevant to this matter.
4. The Wilsons are the parents of Jessica Wilson.
5. EMIA sued Defendant for reimbursement of the medical expenses it paid in behalf of Jessica Wilson that were incurred when Defendant's vehicle struck her.
6. The Wilsons sued Defendant for the wrongful death of Jessica Wilson.
7. This Court ruled previously that the Wilsons' and EMIA's suits against Defendant should be consolidated.
8. Defendant, through his insurer has interplead the policy limit of \$100,000.00 with this Court.
9. EMIA and the Wilsons have dismissed Defendant from the lawsuit with prejudice.
10. The Wilsons have suffered damages for the loss, love and affection of their daughter, and

funeral expenses, which exceed the \$100,000.00 deposited with this Court.

11. The amount of damages claimed by EMIA for the medical expenses paid in behalf of Jessica Wilson also exceed \$100,000.00.

12. The \$100,000.00 deposited with this Court is insufficient to satisfy the damages claimed by the Wilsons and EMIA.

13. EMIA received premiums for providing medical coverage to Jessica Wilson, however, those premiums do not equal the amount paid by EMIA for Jessica Wilson's medical expenses.

14. The Wilsons have labored more than EMIA to acquire the \$100,000.00 that was deposited with this Court by Defendant.

15. EMIA sued the Defendant later than the Wilsons.

16. The Wilsons have paid \$33,334.00 in attorneys' fees and \$18,301.38 in litigation costs.

17. EMIA has also incurred attorney's fees and costs associated with their action against Defendant.

### CONCLUSIONS OF LAW

#### Consolidation

1. EMIA's action against Defendant and the Wilsons' action against Defendant should be consolidated.

#### Allocation of the \$100,000.00

2. Interpleader actions filed pursuant to Rule 22 of the Utah Rules of Civil Procedure are equitable in nature.

3. Where the parties' claims to the \$100,000.00 interplead with the Court exceed that

amount, this Court must balance the equities and determine how that amount should be allocated.

4. The equities that should be balanced in this matter are the Wilsons' loss of their daughter and EMIA's claim for reimbursement for the medical expenses it paid out in behalf of Jessica Wilson.

5. EMIA's action is based in contract, not tort.

6. EMIA's contractual claim survives the death of Jessica Wilson.

7. It is equitable to divide the \$100,000.00 equally between the parties, specifically, \$50,000.00 to the Wilsons and \$50,000.00 to EMIA.

8. It is equitable to reimburse the Wilsons for one half of their attorneys' fees and costs from EMIA's portion. Specifically, the Wilsons should be reimbursed \$16,667.00 in attorneys' fees and \$9,150.69 in costs from EMIA's portion.

9. As a result, the Wilsons should receive \$75,817.69 as their final portion of the \$100,000.00 and EMIA should receive \$24,182.31 as its final portion of the \$100,000.00.

#### ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Case No. 140400111 is consolidated with case no. 110400083.
2. The Wilsons shall receive \$75,817.69 of the \$100,000.00 deposited with this Court and said amount shall be released immediately to the Wilsons.
3. EMIA shall receive \$24,182.31 of the \$100,000.00 deposited with this Court and said amount shall be released immediately to EMIA.
4. The Clerk of the Court is directed to pay out the above sums as stated.

APPROVED AS TO FORM

/s/ Jack C. Helgesen with permission  
Jack C. Helgesen  
Attorney for Plaintiffs Everett and Darla Wilson

SIGNATURE APPEARS AT THE TOP OF THE FIRST PAGE

#### MAILING CERTIFICATE

I hereby certify that on the 3<sup>rd</sup> day of February, 2015, I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Order regarding Allocation of Interpleader Amount Deposited with the Court to be served on each of the following people:

Person's Name and Address

Method of Service

Jeffrey C. Miner  
Stephen F. Edwards  
Morgan, Minnock & James, L.C.  
Kearns Building, Eighth Floor  
136 South Main Street  
Salt Lake City, Utah 84101

Court E-Filing Notification

Jack C. Helgesen  
Tonya Hardy  
Helgesen Houtz & Jones, P.C.

Court E-Filing Notification

1513 North Hill Field Road #3  
Layton, Utah 84041

Clerk, Fourth District Court  
Utah County, Provo Department  
125 North 100 West  
Provo UT 84601

Electronic Filing

/s/ Bonnie Jones

Secretary

# ADDENDUM C

The Order of Court is as follows:  
Dated: April 14, 2014  
09:59:50 AM

/s/ Samuel D. McVey  
District Court Judge



Randall R. Smart (2983)  
Jeffrey A. Callister (9962)  
SMART, SCHOFIELD, SHORTER & LUNCEFORD  
A Professional Corporation  
5295 South Commerce Drive, Suite 200  
Murray, Utah 84107  
Telephone: (801) 747-0647  
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[jeff.callister@utahlaw-smart.com](mailto:jeff.callister@utahlaw-smart.com)

Attorneys for Plaintiff

DISTRICT COURT OF THE STATE OF UTAH  
FOURTH JUDICIAL DISTRICT  
UTAH COUNTY - PROVO DEPARTMENT

EDUCATORS MUTUAL INSURANCE ASSOCIATION Plaintiff(s)  vs.  CADE M. KRUEGER, an individual, and John Does 1 through 100 Defendant(s)	ORDER  Case Number 140400111 Judge Samuel D. McVey
------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------

This matter came before the Court for oral argument on Defendant Cade M. Krueger's ("Defendant") Motion to Dismiss, on March 31, 2014. Plaintiff Educators Mutual Insurance Association ("Plaintiff") was represented by its counsel of record, Randall R. Smart and Jeffrey A. Callister, attorneys at law, of Smart, Schofield, Shorter & Lunceford, a Professional Corporation, and Defendant was represented by his counsel of record, Stephen F. Edwards of, Morgan, Minnock, Rice & James, L.C. The Court having heard oral argument and being fully advised on the premises, and based on Defendant's Motion to Dismiss and the Memorandum in

Support of said Motion, Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss, and Defendant's Reply Memorandum in Support of Defendant's Motion to Dismiss,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Utah Code Ann. Section 31A-21-108 is a specific part of the Utah Code meant to deal with Insurance Company Plaintiffs in the subrogation context.

2. In regard to the determination as to whether or not Plaintiff has standing in this matter, Utah Code Ann. Section 31A-21-108 applies and Utah Code Ann. Sections 78B-2-105, 78B-3-106 and 78B-3-107 do not apply.

3. Pursuant to Utah Code Ann. Section 31A-21-108, an insurer may bring an action to subrogate in either its name or the name of its insured.

4. Plaintiff's insured, the late Jessica Wilson, specifically agreed in her insurance policy with Plaintiff that Plaintiff was entitled to recovery against a third-party tortfeasor.

5. Plaintiff has standing to file this lawsuit.

6. Defendant's Motion to Dismiss is denied.

Approved as to form:

MORGAN, MINNOCK, RICE & JAMES, L.C.

/s/ STEPHEN F. EDWARDS (WITH PERMISSION)

---

Stephen F. Edwards  
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2014, I caused a true and correct copy of the foregoing ORDER to be served on each of the following people:

Person's Name and Address

Method of Service

Jeffrey C. Miner  
Stephen F. Edwards  
Morgan, Minnock & James, L.C.  
Kearns Building, Eighth Floor  
136 South Main Street  
Salt Lake City, Utah 84101

Court E-Filing Notification

Clerk of Court  
Third District Court  
Salt Lake County, Salt Lake Department  
450 South State Street  
Salt Lake City, Utah 84111

Electronic Filing

/s/ Susan Strunk

\_\_\_\_\_  
Legal Assistant

# ADDENDUM D(1)

EIGHTH DISTRICT COURT - VERNAL  
UINTAH COUNTY, STATE OF UTAH

AGCS MARINE INSURANCE COMPANY vs. ADLER HOT OIL SERVICE INC  
CASE NUMBER 150800020 Property Damage

---

CURRENT ASSIGNED JUDGE

EDWIN T PETERSON

PARTIES

Plaintiff - AGCS MARINE INSURANCE COMPANY  
Represented by: THOMAS M REGAN  
Plaintiff - GREAT AMERICAN INSURANCE COMPA  
Represented by: MARK D TAYLOR  
Represented by: THOMAS M REGAN  
Represented by: BRANDEE R LYNCH  
Plaintiff - JESUS OLIVERA  
Represented by: MARK D TAYLOR  
Represented by: THOMAS M REGAN  
Plaintiff - LIBERTY MUTUAL FIRE INSURANCE  
Represented by: THOMAS M REGAN  
Plaintiff - NATIONAL AMERICAN INSURANCE  
Represented by: THOMAS M REGAN  
Plaintiff - PEERLESS INDEMNITY INSURANCE C  
Represented by: THOMAS M REGAN  
Plaintiff - SENTINEL INSURANCE COMPANY  
Represented by: KENNETH W MAXWELL  
Represented by: THOMAS M REGAN  
Plaintiff - SNELSON COMPANIES INC  
Represented by: MARK D TAYLOR  
Represented by: THOMAS M REGAN  
Represented by: BRANDEE R LYNCH  
Plaintiff - ST PAUL MERCURY INSURANCE COMP  
Represented by: JOHN H COLTER  
Represented by: THOMAS M REGAN  
Plaintiff - TODD DEETZ  
Represented by: THOMAS M REGAN  
Represented by: DAVID A REAY  
Plaintiff - WEATHORFORD US LP  
Represented by: THOMAS M REGAN

Represented by: RYAN R JIBSON  
Plaintiff - ALLSTATE INDEMNITY COMPANY  
Represented by: THOMAS M REGAN  
Plaintiff - WESTERN NATIONAL ASSURANCE COM  
Represented by: THOMAS M REGAN  
Plaintiff - AMERICAN FAMILY INSURANCE  
Represented by: THOMAS M REGAN  
Plaintiff - ANDY REPPOND  
Represented by: GRETCHEN H JOHNS  
Plaintiff - BEAR RIVER MUTUAL INSURANCE CO  
Represented by: THOMAS M REGAN  
Plaintiff - CERTAIN UNDERWRITERS AT LLOYDS  
Represented by: KENNETH W MAXWELL  
Represented by: THOMAS M REGAN  
Plaintiff - FARM BUREAU PROPERTY & CASUALT  
Represented by: TRENT J WADDOUPS  
Represented by: THOMAS M REGAN  
Plaintiff - FIRE INSURANCE EXCHANGE  
Represented by: KENNETH W MAXWELL  
Represented by: THOMAS M REGAN  
Plaintiff - FLINT ENERGY SERVICES INC  
Represented by: GRETCHEN H JOHNS  
Plaintiff - CRAIGS ROUSTABOUT SERVICE INC  
Represented by: TERRY M PLANT  
Represented by: JEREMY M SEELEY  
Represented by: MATTHEW D CHURCH  
Plaintiff - DALB-RNI HOLDINGS INC  
Represented by: TERRY M PLANT  
Represented by: JEREMY M SEELEY  
Represented by: MATTHEW D CHURCH  
Plaintiff - KENWORTH SALES COMPANY INC  
Represented by: TERRY M PLANT  
Represented by: JEREMY M SEELEY  
Represented by: MATTHEW D CHURCH  
Plaintiff - FACTORY MUTUAL INSURANCE  
Represented by: KIRSTEN S GRISWOLD  
Plaintiff - NABORS COMPLETION AND PRODUCTI - DISMISSED  
Represented by: KIRSTEN S GRISWOLD  
Plaintiff - EMM REALTY OF UTAH LLC

Represented by: L RICH HUMPHERYS  
Represented by: MICHAEL D JOHNSTON  
Represented by: RYAN R BECKSTROM  
Defendant - ADLER HOT OIL SERVICE INC  
Represented by: JONATHAN L HAWKINS  
Represented by: JOSEPH E MINNOCK  
Defendant - CHANDLER MANUFACTURING INC  
Represented by: PAUL M BELNAP  
Represented by: RYAN P ATKINSON  
Represented by: CHET W NEILSON  
Doing Business As - TODD DEETZ ENT (DEETZ, TODD)  
Third Pty Cmplainant - AUTO OWNERS INSURANCE CO ASO R  
Represented by: LARRY R WHITE  
Represented by: PAUL D VAN KOMEN  
Represented by: ELLIOT B SCRUGGS

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	765.00
	Amount Paid:	765.00
	Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: COMPLAINT - NO AMT S		
	Amount Due:	360.00
	Amount Paid:	360.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: JURY DEMAND - CIVIL		
	Amount Due:	250.00
	Amount Paid:	250.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: 3RD PRTY CMPLT 10K +		
	Amount Due:	155.00
	Amount Paid:	155.00
	Amount Credit:	0.00
	Balance:	0.00

PROCEEDINGS

02-26-15 Filed: Complaint

Printed: 08/26/16 11:48:56

Page 3

02-26-15 Case filed  
02-26-15 Judge EDWIN T PETERSON assigned.  
02-26-15 Fee Account created Total Due: 360.00  
02-26-15 Fee Account created Total Due: 250.00  
02-26-15 COMPLAINT - NO AMT S Payment Received: 360.00  
02-26-15 JURY DEMAND - CIVIL Payment Received: 250.00  
02-26-15 Filed: Return of Electronic Notification  
02-27-15 Filed: Motion to Intervene/Join in behalf of Auto Owners  
Insurance, A/S/O Ronald Horrocks  
02-27-15 Filed: Amended Complaint  
02-27-15 Filed: Return of Electronic Notification  
02-27-15 Filed: Return of Electronic Notification  
03-02-15 Filed return: Acceptance of Service upon JOSEPH E. MINNOCK for  
Party Served: ADLER HOT OIL SERVICE INC  
Service Type: Personal  
Service Date: March 02, 2015  
03-02-15 Filed: Return of Electronic Notification  
03-03-15 Filed: Appearance of Counsel/Notice of Limited Appearance:  
Notice of Entry of Appearance of Counsel  
03-03-15 Filed: Return of Electronic Notification  
03-06-15 Filed: Appearance of Counsel/Notice of Limited Appearance for  
Farm Bureau Property Casualty Company  
03-06-15 Filed: Return of Electronic Notification  
03-17-15 Filed: Request/Notice to Submit for Decision (Intervening  
Plaintiffs Motion to Intervene - Unopposed)  
03-17-15 Filed: Order (Proposed) Granting Filing of Intervening  
Complaint by Auto Owners Insurance Co., A/S/O Ronald Horrocks  
03-17-15 Filed: Return of Electronic Notification  
03-20-15 Filed: Notice of Appearance  
03-20-15 Filed: Return of Electronic Notification  
03-20-15 Filed order: Order Granting Filing of Intervening Complaint by  
Auto Owners Insurance Co., A/S/O Ronald Horrocks  
Judge EDWIN T PETERSON  
Signed March 20, 2015  
03-20-15 Filed: Return of Electronic Notification  
03-23-15 Filed: Appearance of Counsel/Notice of Limited Appearance  
Notice of Appearance of Ryan R. Jibson  
03-23-15 Filed: Return of Electronic Notification  
03-23-15 Filed: Answer and Reliance on Jury Demand  
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ADLER HOT OIL SERVICE INC

03-23-15 Note: Certificate of Readiness for Trial due 04/04/2016  
03-23-15 Filed: NOTICE OF EVENT DUE DATES  
03-23-15 Filed: Return of Electronic Notification  
03-26-15 Filed: Third Party Complaint Intervening Complaint of Auto  
Owners Insurance Co.  
03-26-15 Fee Account created      Total Due:      155.00  
03-26-15 3RD PRTY CMPLT 10K +      Payment Received:      155.00  
03-26-15 Filed: Return of Electronic Notification  
03-26-15 Filed: Appearance of Counsel/Notice of Limited Appearance David  
Reay for Todd Deetz  
03-26-15 Filed: Return of Electronic Notification  
03-26-15 Filed: Appearance of Counsel/Notice of Limited Appearance in  
behalf of Auto Owners Insurance Co., A/S/O Ronald Horrocks  
03-26-15 Filed: Return of Electronic Notification  
03-30-15 Filed: Motion Pro Hac Vice Admission of Mersfelder and Consent  
of Local Counsel  
Filed by: FACTORY MUTUAL INSURANCE,  
03-30-15 Filed: Motion Pro Hac Vice Admission of Pollock and Consent of  
Local Counsel  
Filed by: FACTORY MUTUAL INSURANCE,  
03-30-15 Filed: Order (Proposed) Granting Mersfelder Pro Hac Vice  
Admission  
03-30-15 Filed: Order (Proposed) Granting Pollock Pro Hac Vice Admission  
03-30-15 Filed: Return of Electronic Notification  
03-30-15 Filed order: Order Granting Mersfelder Pro Hac Vice Admission  
Judge EDWIN T PETERSON  
Signed March 30, 2015  
03-30-15 Filed order: Order Granting Pollock Pro Hac Vice Admission  
Judge EDWIN T PETERSON  
Signed March 30, 2015  
03-30-15 Filed: Return of Electronic Notification  
03-30-15 Filed: Return of Electronic Notification  
04-01-15 Filed: Appearance of Counsel/Notice of Limited Appearance  
04-01-15 Filed: Return of Electronic Notification  
04-02-15 Filed: Appearance of Counsel/Notice of Limited Appearance  
Notice of Appearance of Counsel for Craigs Roustabout Service,  
Inc., Dalbo-RNI Holdings, Inc., and Kenworth Sales Co.

04-02-15 Filed: Return of Electronic Notification

04-29-15 Filed: Motion: Stipulation of Dismissal for Nabors Completion  
and Production Services with Prejudice

Filed by: NABORS COMPLETION AND PRODUCTI,

04-29-15 Filed: Order (Proposed) of Dismissal for Nabors Completion and  
Production Services with Prejudice

04-29-15 Filed: Return of Electronic Notification

04-30-15 Filed order: Order of Dismissal for Nabors Completion and  
Production Services with Prejudice

Judge EDWIN T PETERSON

Signed April 30, 2015

04-30-15 Filed: Return of Electronic Notification

05-04-15 Dismissed party - NABORS COMPLETION AND

05-07-15 Filed: SECOND NOTICE OF EVENT DUE DATES

05-19-15 Filed: Appearance of Counsel/Notice of Limited Appearance  
Notice of Appearance

05-19-15 Filed: Return of Electronic Notification

06-01-15 Filed: Motion Pro Hac Vice Motion and consent of sponsoring  
local counsel for pro hac vice admission of Kenneth Januszewski  
Filed by: ST PAUL MERCURY INSURANCE COMP,

06-01-15 Filed: Order (Proposed) Proposed Order of admission of pro hac  
vice attorney

06-01-15 Filed: Return of Electronic Notification

06-04-15 Filed order: Order Proposed Order of admission of pro hac vice  
attorney

Judge EDWIN T PETERSON

Signed June 04, 2015

06-04-15 Filed: Return of Electronic Notification

07-15-15 Filed return: Acceptance of Service upon ACCEPTANCE OF SERVICE  
for

Party Served: CHANDLER MANUFACTURING INC

Service Type: Personal

Service Date: July 15, 2015

07-15-15 Filed: Return of Electronic Notification

08-04-15 Filed: Answer of Chandler Mfg., LLC to Plaintiffs Amended  
Complaint and Reliance on Jury Demand

CHANDLER MANUFACTURING INC

08-04-15 Filed: Return of Electronic Notification

08-11-15 Filed: Motion to Consolidate Actions  
Filed by: CHANDLER MANUFACTURING INC,  
08-11-15 Filed: Memorandum in Support of Motion to Consolidate Actions  
08-11-15 Filed: Exhibit A to Memorandum in Support of Motion to Consolidate Actions  
08-11-15 Filed: Exhibit B to Memorandum in Support of Motion to Consolidate Actions  
08-11-15 Filed: Exhibit C to Memorandum in Support of Motion to Consolidate Actions  
08-11-15 Filed: Exhibit D to Memorandum in Support of Motion to Consolidate Actions  
08-11-15 Filed: Return of Electronic Notification  
08-24-15 Filed: Memorandum Plaintiffs Response Memorandum of Non-Opposition to Defendant Chandler MFG., LLCs Motion to Consolidate Actions  
08-24-15 Filed: Proof of Service  
08-24-15 Filed: Return of Electronic Notification  
10-05-15 Filed: Request/Notice to Submit Motion to Consolidate Actions  
10-05-15 Filed: Return of Electronic Notification  
10-21-15 Filed order: Ruling and Order w/Certificate of Notification  
Judge EDWIN T PETERSON  
Signed October 21, 2015  
12-01-15 Filed: Substitution of Counsel  
12-01-15 Filed: Return of Electronic Notification  
12-07-15 Filed: Proposed Stipulated Schedule Order Thereon  
12-07-15 Filed: Proof of Service  
12-07-15 Filed: Order (Proposed) Proposed Stipulated Schedule Order Thereon  
12-07-15 Filed: Return of Electronic Notification  
12-15-15 Filed order: Order Proposed Stipulated Schedule Order Thereon  
Judge EDWIN T PETERSON  
Signed December 15, 2015  
12-15-15 Filed: Return of Electronic Notification  
01-21-16 Filed: Initial Disclosures  
01-21-16 Filed: Proof of Service  
01-21-16 Filed: Return of Electronic Notification  
01-21-16 Filed: Initial Disclosures, Todd Deetz  
01-21-16 Filed: Certificate of Service: Initial Disclosures, Todd Deetz  
01-21-16 Filed: Return of Electronic Notification  
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01-22-16 Filed: : Initial Disclosures Reppond Flint  
01-22-16 Filed: : Cert of Service Initial Disclosures: Reppond Flint  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: Certificate of Service for Plaintiff Factor Mutual  
Insurance Rule 26 Disclosures  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: CERTIFICATE OF SERVICE OF INTERVENING PLAINTIFF AUTO  
OWNERS INSURANCE CO., A/S/O RONALD HORROCKS INITIAL DISCLOSURES  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: : COS Great American Insurance Co Initial Disclosures  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: : COS Snelson Companies Initial Disclosures  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: Certificate of Service of Plaintiffs Certain  
Underwriters At Lloyds, Fire Insurance Exchange and Sentinel  
Insurance Company Initial Rule 26(a)(1) Disclosure Statement  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: Certificate of Service on EMM Realty of Utah LLCs Rule  
26 Initial Disclosures  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: Plaintiffs Craigs Roustabout Service, Inc.s, Dalbo-RNI  
Holdings, Inc., and Kenworth Sales Companys Initial Disclosures  
and Preliminary Designation of Expert Witnesses  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: Certificate of Service of Weatherford U.S., LPs Rule  
26(a)(1) Initial Disclosures  
01-22-16 Filed: Return of Electronic Notification  
01-22-16 Filed: COS Farm Bureau R26a1  
01-22-16 Filed: Return of Electronic Notification  
01-26-16 Filed: Certificate of Service  
01-26-16 Filed: Return of Electronic Notification  
02-05-16 Filed: Certificate of Service of EMM Realty of Utah LLCs First  
Set of Interrogatories and Request for Production of Documents  
to Each Plaintiff Asserting a Subrogation Claim  
02-05-16 Filed: Certificate of Service of EMM Realty of Utah LLCs First  
Set of Interrogatories and Request for Production of Documents  
to Defendants  
02-05-16 Filed: Return of Electronic Notification  
02-05-16 Filed: Amended Certificate of Service on EMM Realty of Utah

LLCs First Set of Interrogatories and Requests for Production  
of Documents to Each Plaintiff Asserting a Subrogation Claim

02-05-16 Filed: Amended Certificate of Service on EMM Realty of Utah

LLCs First Set of Interrogatories and Requests for Production  
of Documents to Defendants

02-05-16 Filed: Return of Electronic Notification

02-10-16 Filed: Motion for Pro Hac Vice Admission and Consent of Local  
Counsel

Filed by: FACTORY MUTUAL INSURANCE,

02-10-16 Filed: Order (Proposed) for Pro Hac Vice Admission and Consent  
of Local Counsel

02-10-16 Filed: Return of Electronic Notification

02-10-16 Filed order: Order for Pro Hac Vice Admission and Consent of  
Local Counsel

Judge EDWIN T PETERSON

Signed February 10, 2016

02-10-16 Filed: Return of Electronic Notification

02-12-16 Filed: Appearance of Counsel/Notice of Limited Appearance:  
Notice of Entry of Appearance of Counsel Brandee Lynch

02-12-16 Filed: Return of Electronic Notification

02-12-16 Filed: : COS Jesus Oliveras Initial Disclosures

02-12-16 Filed: Return of Electronic Notification

02-26-16 Filed: Certificate of Service (Initial Disclosures of Chandler  
Mfg., LLC)

02-26-16 Filed: Return of Electronic Notification

02-26-16 Filed: : COS: Defendant Adler Hot Oil Service, Inc.s Rule  
26(A)(1) Initial Disclosures

02-26-16 Filed: Return of Electronic Notification

02-29-16 Filed: Motion to Join Insureds as Plaintiffs Pursuant to URCP  
17(a) and 21

Filed by: WESTERN NATIONAL ASSURANCE COM,

02-29-16 Filed: Memorandum ISO Pltfs Motion to Join Insureds as  
Plaintiffs Pursuant to URCP 17(a) and 21

02-29-16 Filed: Certificate of Service

02-29-16 Filed: Return of Electronic Notification

02-29-16 Filed: Motion to Join Subrogors as Named Plaintiffs

Filed by: FARM BUREAU PROPERTY & CASUALTY,

02-29-16 Filed: Return of Electronic Notification

03-01-16 Filed: Motion to Join Subrogor Robert Horrocks as a Party

Pursuant to U.R.C.P. 17(A), 21

Filed by: AUTO OWNERS INSURANCE CO ASO R,

03-01-16 Filed: Return of Electronic Notification

03-01-16 Filed: Motion Sentinel Insurance Companys, Certain Underwriters  
at Lloyds, and Fire Insurance Exchanges Motion to Join  
Subrogors as Parties Under U.R.C.P.17(a),21

Filed by: FIRE INSURANCE EXCHANGE,

03-01-16 Filed: Return of Electronic Notification

03-01-16 Filed: Motion: Factory Insurance Companys Motion to Pursue  
Previously Asserted Claims in the Names of Its Insureds

Filed by: FACTORY MUTUAL INSURANCE,

03-01-16 Filed: Order (Proposed) Regarding Factory Insurance Companys  
Motion to Pursue Previously Asserted Claims in the Names of Its  
Insureds

03-01-16 Filed: Motion: Great American Insurances Motion to Join  
Insured as Plaintiff and Memo in Support

Filed by: GREAT AMERICAN INSURANCE COMPA,

03-01-16 Filed: Return of Electronic Notification

03-01-16 Filed: Return of Electronic Notification

03-02-16 Filed: Motion to Amend

Filed by: ST PAUL MERCURY INSURANCE COMP,

03-02-16 Filed: Memorandum ST. PAUL MERCURY INSURANCE COMPANYS  
MEMORANDUM IN SUPPORT OF ITS MOTION TO SUBSTITUTE INSUREDS NAME  
AS PARTY IN INTEREST

03-02-16 Filed: Order (Proposed) ORDER GRANTING ST. PAUL MERCURY  
INSURANCE COMPANYS MOTION TO SUBSTITUTE INSUREDS NAME AS PARTY  
IN INTEREST

03-02-16 Filed: Return of Electronic Notification

03-04-16 Filed: Certificate of Service

03-04-16 Filed: Return of Electronic Notification

03-04-16 Filed: : COS Great American Ins Co Responses and Objections to  
EMM Realtys First Set IRPDs

03-04-16 Filed: Return of Electronic Notification

03-04-16 Filed: Certificate of Service of Discovery Responses

03-04-16 Filed: Return of Electronic Notification

03-04-16 Filed: : Certificate of Service of Discovery Responses

03-04-16 Filed: Return of Electronic Notification

03-04-16 Filed: COS responses to EMM interrogs RfP

03-04-16 Filed: Return of Electronic Notification

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03-04-16 Filed: Certificate of Service for Factory Insurance Response to  
EMM Discovery

03-04-16 Filed: Return of Electronic Notification

03-07-16 Filed: : Certificate of Service of Defendant Adler Hot Oil  
Services, Inc.s First Set of Requests for Production of  
Documents to EMM Realty of Utah

03-07-16 Filed: Return of Electronic Notification

03-08-16 Filed order: Order Regarding Factory Insurance Companys Motion  
to Pursue Previously Asserted Claims in the Names of Its  
Insureds

Judge EDWIN T PETERSON  
Signed March 08, 2016

03-08-16 Filed: Return of Electronic Notification

03-08-16 Filed: Objection to Entry of Order Regarding Factory Mutual  
Insurance Companys Motion to Pursue Claims Previously Asserted  
in the Names of Its Insureds

03-08-16 Filed: Return of Electronic Notification

03-09-16 Filed: CoS Auto Owners Ins Response to EMM First Set of  
Interrogatories and RfPoD

03-09-16 Filed: Return of Electronic Notification

03-11-16 Filed: Chandler Mfg., LLCs Joinder to EMMs Objection to Entry  
of Order Regarding Factory Mutual Insurance Companys Motion to  
Pursue Claims Previously Asserted in the Names of its Insureds

03-11-16 Filed: Return of Electronic Notification

03-11-16 Filed: Motion for Summary Judgment Dismissing Factory Mutual  
Insurance Company and Sentinel Insurance Companys Claims  
Against Defendants; and  
Filed by: EMM REALTY OF UTAH LLC,

03-11-16 Filed: Return of Electronic Notification

03-11-16 Filed: Proof of Service

03-11-16 Filed: Return of Electronic Notification

03-14-16 Filed: Opposition to Motions to Add Insureds as Parties

03-14-16 Filed: Return of Electronic Notification

03-14-16 Filed: Certificate of Service

03-14-16 Filed: Return of Electronic Notification

03-18-16 Filed: Certificate of Service

03-18-16 Filed: Return of Electronic Notification

03-22-16 Filed: Reply in support of Farm Bureaus Motion to Add Subrogors  
as Parties

03-22-16 Filed: Request/Notice to Submit re: Plaintiffs Motion to Add Subrogors as Parties

03-22-16 Filed: Return of Electronic Notification

03-22-16 Filed: Reply ST. PAUL MERCURY INSURANCE COMPANYS REPLY IN SUPPORT OF ITS MOTION TO SUBSTITUTE INSURED'S NAME AS PARTY IN INTEREST

03-22-16 Filed: Return of Electronic Notification

03-25-16 Filed: Opposition to: Factory Mutual Insurance Response to EMM Motion for Summary Judgment and Reply in Support of Factory's Motion to Pursue Claims in the the Name of their Insureds

03-25-16 Filed: Factory opposition to EMM MSJ Exhibits 1-6

03-25-16 Filed: Factory opposition to EMM MSJ Exhibits 7-13

03-25-16 Filed: Factory opposition to EMM MSJ Exhibits 14-17

03-25-16 Filed: Return of Electronic Notification

03-25-16 Filed: Return of Electronic Notification

03-25-16 Filed: Memorandum In Opposition to EMM Realty of Utahs MSJ and Reply Memo In Support of Motion to Pursue Claims In Name of Insured

03-25-16 Filed: Exhibit 1 to Memo In Opposition to MSJ

03-25-16 Filed: Exhibit 2 to Memo In Opposition to MSJ

03-25-16 Filed: Exhibits 3-10 to Memo In Opposition to MSJ

03-25-16 Filed: Return of Electronic Notification

03-25-16 Filed: Exhibits 11-12 to Memo In Opposition to MSJ

03-25-16 Filed: Exhibits 13-14 to Memo In Opposition to MSJ

03-25-16 Filed: Exhibits 15-25 to Memo In Opposition to MSJ

03-25-16 Filed: Return of Electronic Notification

03-28-16 Filed: AUTO OWNERS INSURANCE CO., A/S/O RONALD HORROCKS REPLY IN SUPPORT OF ITS MOTION TO JOIN INSURED'S NAME AS A PARTY IN INTEREST

03-28-16 Filed: Return of Electronic Notification

03-28-16 Filed: Reply in Support of Plaintiffs Motion to Join Their Insureds as Plaintiffs Pursuant to URCP 17(a) and 21

03-28-16 Filed: Certificate of Service

03-28-16 Filed: Return of Electronic Notification

03-30-16 Filed: : COS: Defendant Adler Hot Oil Service, Inc.'s Responses to EMM Realty of Utahs First Set of Discovery Requests

03-30-16 Filed: Return of Electronic Notification

04-01-16 Filed: Reply Memorandum in Support of EMM Realty of Utah LLCs Motion for Summary Judgment Dismissing Factory Mutual Insurance

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Company and Sentinel Insurance Companys Claims Against  
Defendants

- 04-01-16 Filed: Exhibit A to Reply Memorandum in Support of EMM Realty  
of Utahs Motion for Summary Judgment Dismissing Factory Mutual  
Insurance Company and Sentinel Insurance Companys Claims  
Against Defendants
- 04-01-16 Filed: Return of Electronic Notification
- 04-11-16 Filed: Request/Notice to Submit for Decision (1) Factory Mutual  
and Sentinels Motions to Join Subrogors As Parties and (2) EMM  
Realtys Motin for Summary Judgment Dismissing Factory Mutual  
and Sentinels Claims Against Defendants
- 04-11-16 Filed: Return of Electronic Notification
- 04-11-16 Filed: Certificate of Service of Discovery Served Upon  
Defendant Chandler Mfg., LLC
- 04-11-16 Filed: Request for Hearing /to Submit EMM Realtys Motion for  
Summary Judgment Dismissing Factory and Sentinel Insurance with  
Oral Argument Requested
- 04-11-16 Filed: Return of Electronic Notification
- 04-11-16 Filed: Return of Electronic Notification
- 04-21-16 Filed: Sentinel Insurance Companys, Certain Underwriters at  
Lloyds and Fire Insurance Exchanges Errata To Correct Title Of  
Motion To Be Consistent With Relicf Sought
- 04-21-16 Filed: Return of Electronic Notification
- 04-25-16 Filed: Certificate of Service: EMM Realty of Utah LLCs Response  
to Defendant Adler Hot Oil Services, Inc First Set Of Requests  
for Production of Documents
- 04-25-16 Filed: Return of Electronic Notification
- 04-29-16 Filed: Motion for Protective Order  
Filed by: ADLER HOT OIL SERVICE INC,
- 04-29-16 Filed: Return of Electronic Notification
- 04-29-16 Filed: Stipulation for Dismissal
- 04-29-16 Filed: Request/Notice to Submit Request to Submit
- 04-29-16 Filed: Order (Proposed) Order of Dismissal
- 04-29-16 Filed: Return of Electronic Notification
- 05-02-16 Filed order: Order of Dismissal

Judge EDWIN T PETERSON

Signed May 02, 2016

05-02-16 Filed: Return of Electronic Notification

05-09-16 Filed: Certificate of Service (Defendant Chandler Mfg., LLCs

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Responses to Certain Underwriters at Lloyds, Fire Insurance  
Exchanges, and Sentinel Insurance Companys First Set of  
Requests for Admission)

05-09-16 Filed: Return of Electronic Notification

05-13-16 Filed: Request/Notice to Submit: Request to Submit for  
Decision: Motion for Protective Order

05-13-16 Filed: Order (Proposed): Protective Order

05-13-16 Filed: Return of Electronic Notification

05-20-16 Filed: Request/Notice to Submit To Submit For Decision

05-20-16 Filed: Return of Electronic Notification

05-23-16 Filed: Certificate of Service (Defendant Chandler Mfg., LLCs  
Responses to Plaintiffs Certain Underwriters at Lloyds, Fire  
Insurance Exchanges, and Sentinel Insurance Companys First Set  
of Interrogatories and Requests for Production of Documents)

05-23-16 Filed: Return of Electronic Notification

05-24-16 Filed order: Order: Protective Order

Judge EDWIN T PETERSON

Signed May 24, 2016

05-24-16 Filed: Return of Electronic Notification

05-26-16 Filed: Notice of Rule 30(b)(6) Deposition of Adler Hot Oil  
Services, Inc., and Adler Hot Oil Services, LLC

05-26-16 Filed: Notice of Rule 30(b)(6) Video Conference Deposition of  
Chandler Mfg., LLC, f/k/a Chandler Manufacturing Inc.

05-26-16 Filed: Return of Electronic Notification

06-07-16 Filed: Proof of Service of Discovery Requests to Adler

06-07-16 Filed: Proof of Service of Discovery Requests to Chandler

06-07-16 Filed: Return of Electronic Notification

06-10-16 Filed: Other - Not Signed Order (Proposed) ORDER GRANTING ST.  
PAUL MERCURY INSURANCE COMPANYS MOTION TO SUBSTITUTE INSURED'S  
NAME AS PARTY IN INTEREST

06-10-16 Note: A ruling and order on this issue will be entered shortly.

06-10-16 Filed: Return of Electronic Notification

06-10-16 Filed order: Ruling and Order

Judge EDWIN T PETERSON

Signed June 10, 2016

06-10-16 MOTIONS HEARING/ORAL ARGUMENTS scheduled on July 18, 2016 at  
01:30 PM in ROOM 2 with Judge PETERSON.

06-10-16 Notice - NOTICE for Case 150800020 ID 17504817

MOTIONS HEARING/ORAL ARGUMENTS is scheduled.

Date: 07/18/2016.

Time: 01:30 p.m.

Location: ROOM 2

Vernal District Court

920 East Hwy 40

Vernal, UT 84078

Before Judge: EDWIN T PETERSON

06-10-16 Filed: Notice for Case 150800020 ID 17504817

06-21-16 Filed: Certificate of Service (Chandler Manufacturings First Set of Interrogatories and Requests for Production of Documents to Adler Hot Oil Services)

06-21-16 Filed: Return of Electronic Notification

07-01-16 Filed: Motion for Leave to Appear Telephonically for Oral Argument

Filed by: WESTERN NATIONAL ASSURANCE COM,

07-01-16 Filed: Proof of Service

07-01-16 Filed: Order (Proposed) Regarding Motion for Leave to Appear Telephonically for Oral Argument

07-01-16 Filed: Return of Electronic Notification

07-03-16 Filed order: Order Regarding Motion for Leave to Appear Telephonically for Oral Argument

Judge EDWIN T PETERSON

Signed July 03, 2016

07-03-16 Filed: Return of Electronic Notification

07-05-16 Filed: Certificate of Service Chandler MFG Responses To Plaintiffs AGCS Marine Insurance Companys, Allstate Indemnity Companys, American Family Insurances, Bear River Mutual Insurance Companys, Liberty Mutual Fire Insurance Company

07 05-16 Filed: Return of Electronic Notification

07-06-16 Filed: Certificate of Service (Chandler Mfg.s Second Set of Interrogatories and Requests for Production of Documents to Adler Hot Oil Services)

07-06-16 Filed: Return of Electronic Notification

07-14-16 Filed: Certificate of Service (Chandler Mfg., LLCs Third Set of Interrogatories and Requests for Production of Documents to Adler Hot Oil Services)

07-14-16 Filed: Return of Electronic Notification

07-15-16 Filed: Certificate of Service (Defendant Chandler Mfg., LLCs Responses to Plaintiff EMM Realty of Utah, LLCs Requests for

Production of Documents and Interrogatories)

07-15-16 Filed: Return of Electronic Notification

07-18-16 TELEPHONIC STATUS CONFERENCE scheduled on December 05, 2016 at  
01:00 PM in ROOM 2 with Judge PETERSON.

07-18-16 Minute Entry - MOTIONS HEARING/ORAL ARGUMENTS

Judge: EDWIN T PETERSON

Clerk: brianl

PRESENT

Plaintiff's Attorney(s): MATTHEW D CHURCH

L RICH HUMPHERYS

RYAN R JIBSON

GRETCHEN H JOHNS

MICHAEL D JOHNSTON

BRANDEE R LYNCH

KENNETH W MAXWELL

THOMAS M REGAN

MARK D TAYLOR

TRENT J WADDOUPS

Defendant's Attorney(s): RYAN P ATKINSON

JOSEPH E MINNOCK

Audio

Tape Number: Vern2 Tape Count: 3:07:25

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Thomas Regan appears telephonically. Dart Winkler and Kenneth Januszewski appear pro hac vice. The Court hears from counsel. A resolution may have been reached, and the issues are discussed with the Court. This matter is set for Telephonic Status Conference on 12/05/2016 at 1 p.m. Mr. L. Rich Humpherys will prepare an order based on today's proceedings. (3:32:53)

TIME: 3:07:25 PM

TELEPHONIC STATUS CONFERENCE is scheduled.

Date: 12/05/2016

Time: 01:00 p.m.

Location: ROOM 2

Vernal District Court

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920 East Hwy 40  
Vernal, UT 84078

Before Judge: EDWIN T PETERSON

- 07-20-16 Filed: Notice of Depositions of Ryan Runolfson, RMon  
Chamberlain, and Adler Hot Oil Services, LLC
- 07-20-16 Filed: Return of Electronic Notification
- 07-20-16 Filed: : Certificate of Service for Snelson Companies First  
Supplemental Initial Disclosures
- 07-20-16 Filed: Return of Electronic Notification
- 07-26-16 Filed: Amended Notice of Depositions of Ryan Runolfson, RMon  
Chamberlain, and Adler Hot Oil Services, LLC
- 07-26-16 Filed: Return of Electronic Notification
- 07-27-16 Filed: : COS: Defendant Adler Hot Oil Services, Inc.s Responses  
to EMM Realty of Utahs Requests for Production of Documents and  
Interrogatories to Adler Hot Oil Services, Inc., and Adler Hot  
Oil Services, LLC
- 07-27-16 Filed: : COS: Defendant Adler Hot Oil Services, Inc.s Responses  
to Chandler Manufacturing, LLCs First Set of Interrogatories  
and Requests for Production of Documents to Adler Hot Oil  
Services
- 07-27-16 Filed: : COS: Defendant Adler Hot Oil Services, Inc.s Responses  
to Chandler Manufacturing, LLCs Second Set of Interrogatories  
and Requests for Production of Documents to Adler Hot Oil  
Services
- 07-27-16 Filed: : COS: Defendant Adler Hot Oil Services, Inc.s Responses  
to Chandler Manufacturing, LLCs Third Set of Interrogatories  
and Requests for Production of Documents to Adler Hot Oil  
Services
- 07-27-16 Filed: : COS: Defendant Adler Hot Oil Services, Inc., and Adler  
Hot Oil Services LLCs Responses to AGCS Marine Insurance  
Company, et als, First Set of Interrogatories and Requests for  
Production of Documents
- 07-27-16 Filed: Return of Electronic Notification
- 07-29-16 Filed: Certificate of Service Plaintiff EMM Realty of Utah LLCs  
First Supplemental Disclosures
- 07-29-16 Filed: Return of Electronic Notification
- 08-01-16 Filed: : Notice of Deposition of Robert Lapin
- 08-01-16 Filed: Return of Electronic Notification
- 08-03-16 Filed: : Notice of Deposition of Jesus Olivera

08-03-16 Filed: Return of Electronic Notification  
08-10-16 Filed: : Notice of Telephone Conference  
08-10-16 Filed: Return of Electronic Notification  
08-17-16 Filed: : Amended Notice of Deposition  
08-17-16 Filed: Return of Electronic Notification  
08-23-16 Filed: : Amended Notice of Deposition of Jesus Olivera  
08-23-16 Filed: Return of Electronic Notification  
08-25-16 Filed: : Amended Notice of Deposition of Jesus Olivera  
08-25-16 Filed: : Amended Notice of Deposition of Robert Lapin  
08-25-16 Filed: Return of Electronic Notification  
08-25-16 Filed: Adler Hot Oil Designation of Rule 30(b)(6) Witnesses  
08-25-16 Filed: Return of Electronic Notification

# ADDENDUM D(2)

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Indemnity Company; American Family  
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Company; Liberty Mutual Fire Insurance  
Company; National American Insurance;  
Peerless Indemnity Insurance Company; and  
Western National Assurance Company

\*Additional counsel and their clients are set forth in Exhibit 1 attached hereto.

IN THE EIGHTH DISTRICT COURT, UNITAH COUNTY

STATE OF UTAH

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AGCS MARINE INSURANCE COMPANY; )  
ALLSTATE INDEMNITY COMPANY; )  
AMERICAN FAMILY INSURANCE; ANDY )  
REPPOND; BEAR RIVER MUTUAL )  
INSURANCE COMPANY; CERTAIN )  
UNDERWRITERS AT LLOYDS; FARM )  
BUREAU PROPERTY & CASUALTY )  
INSURANCE COMPANY; FIRE INSURANCE )  
EXCHANGE; FLINT ENERGY SERVICES, )  
INC.; GREAT AMERICAN INSURANCE )  
COMPANY; JESUS OLIVERA; LIBERTY )  
MUTUAL FIRE INSURANCE COMPANY; )  
NATIONAL AMERICAN INSURANCE; )  
PEERLESS INDEMNITY INSURANCE )  
COMPANY; SENTINEL INSURANCE )  
COMPANY; SNELSON COMPANIES, INC.; )  
ST. PAUL MERCURY INSURANCE )  
COMPANY; TODD DEETZ D/B/A TODD )  
DEETZ ENT; WEATHERFORD U.S., LP; )  
WESTERN NATIONAL ASSURANCE )  
COMPANY; FACTORY MUTUAL )

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Civil Case No.: 150800020  
Complaint Filed: February 26, 2015

**AMENDED COMPLAINT  
JURY DEMAND**

LEGAL\22273547\1  
LEGAL\22281258\1

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INSURANCE COMPANY; CRAIG'S  
ROUSTABOUT SERVICE, INC.; NABORS  
COMPLETION AND PRODUCTION  
SERVICES CO.; DALBO-RNI HOLDINGS,  
INC.; and KENWORTH SALES COMPANY. )

Plaintiffs, )

v. )

ADLER HOT OIL SERVICE, INC., a Utah  
corporation; CHANDLER MANUFACTURING,  
INC., a Texas corporation; and DOES 1 through  
50, inclusive, )

Defendants. )

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Plaintiffs AGCS MARINE INSURANCE COMPANY; ALLSTATE INDEMNITY  
COMPANY; AMERICAN FAMILY INSURANCE; ANDY REPPOND; BEAR RIVER  
MUTUAL INSURANCE COMPANY; CERTAIN UNDERWRITERS AT LLOYDS; FARM  
BUREAU PROPERTY & CASUALTY INSURANCE COMPANY; FIRE INSURANCE  
EXCHANGE; FLINT ENERGY SERVICES, INC.; GREAT AMERICAN INSURANCE  
COMPANY; JESUS OLIVERA; LIBERTY MUTUAL FIRE INSURANCE COMPANY;  
NATIONAL AMERICAN INSURANCE; PEERLESS INDEMNITY INSURANCE  
COMPANY; SENTINEL INSURANCE COMPANY; SNELSON COMPANIES, INC.; ST.  
PAUL MERCURY INSURANCE COMPANY; TODD DEETZ D/B/A TODD DEETZ ENT;  
WEATHERFORD U.S., LP; WESTERN NATIONAL ASSURANCE COMPANY; FACTORY  
MUTUAL INSURANCE COMPANY; CRAIG'S ROUSTABOUT SERVICE, INC.; NABORS  
COMPLETION AND PRODUCTION SERVICES CO.; DALBO-RNI HOLDINGS, INC.; and  
KENWORTH SALES COMPANY. ("Plaintiffs") are informed and believe, and thereon allege  
against Defendants, and each of them, as follows:

### JURISDICTION AND VENUE

1. This action arises out of a fire and/or explosion ("Explosion") that occurred on or about March 2, 2013 at 4907 South 4625 East, Vernal, Utah, 84078 ("Premises").

2. This Court has jurisdiction over the parties and venue is proper in this Court pursuant to U.C.A. § 78B-3-307.

### GENERAL ALLEGATIONS

3. At all times herein mentioned, Plaintiffs were, and are, persons who sustained damages and/or injury as a result of the Explosion or the insurance companies of persons who sustained damage and/or injury as a result of the Explosion. Plaintiffs include business who, at all times relevant, were and are authorized to conduct and transact business in the State of Utah and insurance companies authorized to conduct and transact business in the State of Utah as an insurance carrier and who provided insurance benefits to their insureds for damages caused them by the Explosion. The individual Plaintiffs are as follows:

- a. Jesus Olivera
- b. Andy Reppond
- c. Todd Deetz
- d. Weatherford U.S., LP
- e. Nabors Completion and Production Services, Co.
- f. Craig's Roustabout Services, Inc.
- g. Dalbo-RNI Holdings, Inc.
- h. Kenworth Sales Company

4. At all times herein mentioned, ADLER HOT OIL SERVICE, INC. was, and is, a corporation authorized to conduct and transact business in the State of Utah.

5. At all times herein mentioned, CHANDLER MANUFACTURING, INC. was, and is, a corporation authorized to conduct and transact business in the State of Utah.

6. DOES 1 through 50, inclusive, are sued herein by their fictitious names. Plaintiffs believe that such DOE defendants are responsible, in whole or part, for the incident and damage hereinafter alleged. Plaintiffs will amend this Complaint to properly identify such defendants once their identities become known to Plaintiffs.

7. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned, each of the defendants were the agent, servant, representative, or employee of each of the remaining defendants, and were at all times acting within the purpose and scope of said agencies, service or employment with the consent, permission or approval of each of their co-defendants in committing the acts and omissions herein alleged.

8. On or about March 2, 2013 the Explosion occurred on Defendant ADLER HOT OIL SERVICE, INC.'s premises at 4907 South 4625 East, Vernal, Utah, 84078.

9. The Explosion caused bodily injury ("Subject Injury") or damaged real and personal property ("Subject Property") belonging to Plaintiffs and/or insured by Plaintiffs ("Subject Losses"), in amounts to be proved at trial

10. At the time of the Subject Losses, there were in effect insurance policies issued by the insurance company Plaintiffs to their respective insureds which insured against losses of the types alleged to have been sustained herein.

11. Stubbs Oil Company, Inc. was insured by St. Paul Mercury Insurance Company. Stubbs Oil Company, Inc. suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

12. Chapman Construction was insured by AGCS Marine Insurance Company. Chapman Construction suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

13. Matt Betts Trucking, Inc., was insured by Western National Assurance Company. Matt Betts Trucking, Inc., suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

14. William and Linda Milholland were insured by Bear River Mutual Insurance Company. William and Linda Milholland suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

15. Travis Johnson was insured by Allstate Insurance Company. Travis Johnson suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

16. Split Mountain Travel Plaza, Inc., was insured by Peerless Indemnity Insurance Company, suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

17. Warren Equipment Company was insured by Liberty Mutual Fire Insurance. Warren Equipment Company suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

18. Todd Deetz d/b/a Deetz Ent (Enterprises) was insured by Certain Underwriters at Lloyds. Todd Deetz suffered damages to personal property, and was insured for some, but not all, personal property lost or damaged.

19. Snelson Companies, Inc. suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

20. EMM Realty of Utah, LLC was insured by Sentinel Insurance Company. EMM Realty of Utah, LLC suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

21. EMM Realty of Utah, LLC was also insured by Factory Mutual Insurance Company. EMM Realty of Utah, LLC suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

22. Flint Energy Services Inc. is a Delaware corporation with its principal place of business in Houston, Texas. Plaintiff Flint Energy Services Inc. was uninsured. Plaintiff Flint Energy Services Inc. suffered damages to business property, and was uninsured for all business property lost or damaged.

23. Andy Reppond is an individual residing in Marion, Union Parish, State of Louisiana. Andy Reppond was uninsured. Andy Reppond suffered damages to his business property and personal property, and was uninsured for all business and personal property lost or damaged.

24. Weatherford U.S., LP is a limited partnership organized and existing under the laws of the State of Louisiana, and is authorized to conduct and transact business in the State of Utah. Weatherford U.S., LP suffered damages to real and personal property, and was uninsured for all property lost or damaged.

25. DM Brown Construction was insured by Farm Bureau Property & Casualty Insurance Company. DM Brown Construction suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

26. Marcia Luck was insured by Farm Bureau Property & Casualty Insurance Company. Marcia Luck suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

27. Loren S. Richins was insured by Farm Bureau Property & Casualty Insurance Company. Loren S. Richins suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

28. Maralee Richens was insured by Fire Insurance Exchange. Maralee Richens suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

29. National Oilwell Varco was insured by Factory Mutual Insurance Company. National Oilwell Varco suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

30. Brady Trucking was insured by Great American Insurance Company. Brady Trucking suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

31. Aztec Well Servicing was insured by National American Insurance. Aztec Well Servicing suffered damages to real and personal property, and was insured for some, but not all, personal and real property lost or damaged.

32. Marsha and Terry Dugan were insured by American Family Insurance. Marsha and Terry Dugan suffered damages to real and personal property, and were insured for some, but not all, personal and real property lost or damaged.

33. Nabors Completion and Production Services, Co., is a corporation organized and existing under the laws of the State of Delaware, and is authorized to conduct and transact business in the State of Utah. Nabors Completion and Production Services, Co. suffered damages to real and personal property, as well as business interruption and loss of revenue.

34. Craig's Roustabout Services, Inc., is a corporation organized and existing under the laws of the State of Utah, and is authorized to conduct and transact business in the State of Utah. Craig's Roustabout Services, Inc. suffered damages to real and personal property, as well as business interruption and loss of revenue.

35. Dalbo-RNI Holdings, Inc., is a corporation organized and existing under the laws of the State of Delaware, and is authorized to conduct and transact business in the State of Utah. Dalbo-RNI Holdings, Inc. suffered damages to personal and business property, as well as business interruption and loss of revenue.

36. Kenworth Sales Company is a corporation organized and existing under the laws of the State of Utah, and is authorized to conduct and transact business in the State of Utah. Kenworth Sales Company suffered damages to real and personal property, as well as business interruption and loss of revenue.

37. Pursuant to the terms of the aforementioned insurance policies and claims for benefits filed thereunder by Plaintiffs' insured parties, the insurance company Plaintiffs paid to their respective insureds amounts exceeding one million dollars (\$1,000,000), amounts to be proven at trial.

38. Pursuant to the terms of the aforementioned insurance policy, equity, and by operation of law, the insurance company Plaintiffs are subrogated to the rights of their insured parties to the amounts paid as a result of the losses, in amounts to be proven at trial.

### FIRST CAUSE OF ACTION

(For Negligence Against Defendants ADLER HOT OIL SERVICE, INC.; CHANDLER MANUFACTURING, INC.; and DOES 1 through 50, Inclusive)

39. Plaintiffs adopt and incorporate by reference allegations 1 through 12 as though fully set forth herein.

40. Defendant ADLER HOT OIL SERVICE, INC. heats and pumps fluids at high pressure to circulate and clean oil and gas processing equipment. Services include pumping fluid down well bores, treating well bores with chemicals, and maintaining hot oiling rods, tubing, and flow lines.

41. CHANDLER MANUFACTURING, INC. manufactures oilfield equipment.

42. At the time of the explosion, Defendant ADLER HOT OIL SERVICE, INC. leased or owned and was operating a truck manufactured by CHANDLER MANUFACTURING, INC. ("Subject Vehicle"). The Subject Vehicle was mounted with propane tanks.

43. Defendants ADLER HOT OIL SERVICE, INC. and CHANDLER MANUFACTURING, INC. were under a duty of care to exercise due and reasonable care and caution in the maintenance and operation of the Subject Vehicle.

44. Defendants ADLER HOT OIL SERVICE, INC. and CHANDLER MANUFACTURING, INC. breached the aforementioned duty through one or more of the following acts and/or omissions:

- a. carelessly and negligently failing to maintain the Subject Vehicle, in violation of the Utah Code including but not limited to U.C.A. § 41-6a- 1601 such that it had a dangerous propensity to ignite a fire and/or cause an explosion;
- b. carelessly and negligently servicing the Subject Vehicle such that it had a dangerous propensity to ignite a fire and/or cause an explosion;
- c. carelessly and negligently performing repair work on the Subject Vehicle such that it had a dangerous propensity to ignite a fire and/or cause an explosion;
- d. carelessly and negligently inspecting the Subject Vehicle such that it had a dangerous propensity to ignite a fire and/or cause an explosion;
- e. carelessly and negligently operating the Subject Vehicle and its propane tanks such that it had a dangerous propensity to ignite a fire and/or cause an explosion; and
- f. were otherwise careless and negligent in acting or failing to act.

45. Defendant ADLER HOT OIL SERVICE, INC. negligently filled the propane tanks to their capacity or beyond in the cold outside environment and then moved them into a heated garage for overnight storage.

46. Defendant ADLER HOT OIL SERVICE, INC. knew or should have known that the difference between the outside temperature and the temperature in the garage would cause the propane gas to expand and leak into the garage, making it likely a fire or explosion would result.

47. Defendant CHANDLER MANUFACTURING, INC. sold or leased the Subject Vehicle to Defendant ADLER HOT OIL SERVICE, INC.

48. Defendant CHANDLER MANUFACTURING, INC. knew or should have known that the Subject Vehicle's manufacture and/or design would cause propane gas to leak if used in the foreseeable manner Defendant ADLER HOT OIL SERVICE, INC. used it.

49. As a direct and proximate result of the aforementioned negligent acts or omissions to act, the Explosion occurred causing the damage and injury alleged herein.

### SECOND CAUSE OF ACTION

(For Strict Liability – Abnormally Dangerous Activity Against Defendant  
ADLER HOT OIL SERVICE, INC. and DOES 1 through 50, Inclusive)

50. Plaintiffs adopt and incorporate by reference allegations 1 through 23 as though fully set forth herein.

51. Defendant's activities in operating, controlling, managing, and/or maintaining the Subject Vehicle constituted an abnormally dangerous activity.

52. Defendant's activities posed a high degree of risk of some harm to the Subject Property. Defendant filled two propane tanks to capacity or beyond while outside in cold temperatures, sealed them, and moved and left them in a heated garage. Because propane gas is highly flammable and is known to expand in warm temperatures, Defendant's activities posed a high degree of risk of harm to neighboring persons and property, including Plaintiffs.

53. It was likely that any harm caused by Defendant's activities would be great because Defendant's activities increased the likelihood that a fire or explosion would occur and fires and explosions inherently cause significant damage to surrounding property. Further,

Defendant left the propane tanks unattended for the night, undoubtedly delaying response time in the case of fire or an explosion and thereby increasing the likelihood of severe damage.

54. Defendant's activities were such that Defendant could not eliminate the risk through the exercise of reasonable care. Defendant's method of filling propane tanks to their capacity or beyond and leaving them in a heated garage unattended is characterized by an inability to eliminate the risk of great harm by the exercise of reasonable care.

55. Defendant's activity is not one of common usage because it is not customarily carried on by the great mass of mankind or by many people in the community. Both Defendant's business services and specific method of filling and storing flammable propane gas are uncommon.

56. Defendant's activities on March 2, 2013 were inappropriate considering the place they were carried out. Defendant parked the truck with the propane tanks in a garage near residences. In fact, after the explosion and ensuing fire, law enforcement had to evacuate residents living within a half-mile of the site.

57. The dangerous attributes of Defendant's activities outweigh the value of Defendant's activities to the community. The risk of explosion and fire caused by Defendant's practices outweigh the value of clean oil and gas processing equipment because the risk is to not only property, but people's lives. In November 2010, there was a similar explosion and fire at the same building. The blast injured two people and caused two million dollars in property damage.

58. Plaintiffs and/or Plaintiffs' insureds were damaged by the fire and/or explosion which was a direct result of Defendant's abnormally dangerous activities in operating and maintaining the Subject Vehicle.

59. Plaintiffs' damages were the type of harm that would be anticipated as a result of the risk created by Defendant's abnormally dangerous activities. Specifically, the Explosion was the type of harm that would be anticipated as a result of leaking propane gas.

60. Defendant's abnormally dangerous activity resulted in an explosion and fire and was a substantial factor in causing damage and destruction alleged herein, in amounts to be proved at trial.

### **THIRD CAUSE OF ACTION**

**(For Private Nuisance Against Defendant ADLER HOT OIL**

**SERVICE, INC. and DOES 1 through 50, Inclusive)**

61. Plaintiffs adopt and incorporate by reference allegations 1 through 34 as though fully set forth herein.

62. Defendant's activities in operating, controlling, managing, and/or maintaining the Subject Vehicle constituted a private nuisance.

63. Defendant's activities caused a substantial and unreasonable interference with the private use and enjoyment of the property of Plaintiffs and/or Plaintiffs' insureds.

64. Defendant's activities posed significant risk of great harm to the Subject Property. The activities posed a significant risk of explosion and fire, which would likely greatly damage any surrounding property.

65. Defendant's activities ultimately caused great damage to the Subject Property, interfering with the use and enjoyment of the Subject Property. As a result of the damage,

Plaintiffs' of Plaintiffs' insured parties were required to relocate their homes and businesses, and repair portions of the Subject Property.

66. As a direct and proximate result of the aforementioned acts or omissions to act, the Explosion took place resulting in damages alleged herein, in amounts to be proved at trial.

#### **FOURTH CAUSE OF ACTION**

**(For Trespass Against Defendant ADLER HOT OIL SERVICE, INC.  
and DOES 1 through 50, Inclusive)**

67. Plaintiffs adopt and incorporate by reference allegations 1 through 40 as though fully set forth herein.

68. Defendant trespassed on the Subject Property.

69. Defendant entered and remained on the Subject Property when Defendant caused shock waves from the Explosion to enter and permanently damage the Subject Property.

70. As a direct and proximate result of the aforementioned acts or omissions to act, portions of the Subject Property suffered the damages and injury alleged herein, in amounts to be proven at trial.

#### **FIFTH CAUSE OF ACTION**

**(For Strict Product Liability for Manufacturing or Design Defect Against Defendant  
CHANDLER MANUFACTURING, INC. and DOES 1 through 50, Inclusive)**

71. Plaintiffs adopt and incorporate by reference allegations 1 through 45 as though fully set forth herein.

72. Defendant designed and manufactured the Subject Vehicle.

73. The Subject Vehicle had design and/or manufacturing defects that made the product unreasonably dangerous.

74. The manufacture and/or design of the Subject Vehicle made it more likely that propane gas would leak out from the propane tanks. Allowing the tanks to be stored on top of one another allowed the lower tank to be overfilled. The liquid level gauge was difficult to see, as it was located on top of the upper tank. The tanks were designed to be filled beyond the level established by applicable laws, codes, and government and industry standards.

75. The defect(s) were present at the time Defendant manufactured, sold, or distributed the Subject Vehicle.

76. The defect(s) were causes of Plaintiffs' injuries and damages.

77. As a direct and proximate result of the defects, the injury and damages alleged herein took place in amounts to be proven at trial.

#### **SIXTH CAUSE OF ACTION**

**(For Negligent Product Liability for Manufacturing or Design Defect Against Defendant  
CHANDLER MANUFACTURING, INC. and DOES 1 through 50, Inclusive)**

78. Plaintiffs adopt and incorporate by reference allegations 1 through 52 as though fully set forth herein.

79. Defendant designed and manufactured the Subject Vehicle.

80. The Subject Vehicle had a design and/or manufacturing defect that made the product unreasonably dangerous.

81. The defect(s) were the result of Defendant's failure to use reasonable care.

82. The manufacture and/or design of the Subject Vehicle made it more likely that propane gas would leak out from the propane tanks. Allowing the tanks to be stored on top of one another allowed the lower tank to be overfilled. The liquid level gauge was difficult to see,

as it was located on top of the upper tank. The tanks were designed to be filled beyond the level established by applicable laws, codes, and government and industry standards.

83. The defect(s) were present at the time Defendant manufactured, sold, or distributed the Subject Vehicle.

84. The defect(s) were causes of Plaintiffs' injuries and damages.

85. As a direct and proximate result of the defects, the Explosion occurred causing the injury and damages alleged herein, in amounts to be proven at trial.

#### **SEVENTH CAUSE OF ACTION**

**(For Strict Product Liability for Failure to Warn Against Defendant CHANDLER  
MANUFACTURING, INC. and DOES 1 through 50, Inclusive)**

86. Plaintiffs adopt and incorporate by reference allegations 1 through 60 as though fully set forth herein.

87. Defendant had a duty to warn about a danger from the Subject Vehicle's foreseeable use of which Defendant knew or reasonably should have known and that a reasonable user would not expect.

88. Defendant failed to provide an adequate warning at the time the product was manufactured, distributed, or sold. Defendant did not supply instructions or warnings for filling the tanks. Defendants did not supply instructions or warnings for filling the tanks in cold conditions and then moving the tanks into a warmer environment.

89. The lack of an adequate warning made the product defective and unreasonably dangerous.

90. The lack of an adequate warning was a cause of Plaintiffs' injuries and damages.

91. It was foreseeable that one would fill the tanks to capacity because the design and manufacture of the Subject Vehicle allowed them to be filled to capacity.

92. A reasonable user would not expect the Subject Vehicle to leak propane gas and cause an explosion.

93. As a direct and proximate result of the failure to warn, the Explosion took place causing the injury and damages alleged herein in amounts to be proved at trial.

#### **EIGHTH CAUSE OF ACTION**

**(For Negligent Product Liability for Failure to Warn Against Defendant CHANDLER  
MANUFACTURING, INC. and DOES 1 through 50, Inclusive)**

94. Plaintiffs adopt and incorporate by reference allegations 1 through 68 as though fully set forth herein.

95. Defendant had a duty to warn about a danger from the Subject Vehicle's foreseeable use of which Defendant knew or reasonably should have known and that a reasonable user would not expect.

96. Defendant failed to exercise reasonable care because he failed to provide an adequate warning at the time the product was manufactured, distributed, or sold. Defendant did not supply instructions for filling the tanks. . Defendants did not supply instructions or warnings for filling the tanks in cold conditions and then moving the tanks into a warmer environment.

97. The lack of an adequate warning made the product defective and unreasonably dangerous.

98. The lack of an adequate warning was a cause of Plaintiffs' injuries and damages.

99. It was foreseeable that one would fill the tanks to capacity because the design and manufacture of the Subject Vehicle allowed them to be filled to capacity.

100. A reasonable user would not expect the Subject Vehicle to leak propane gas and cause an explosion.

101. As a direct and proximate result of the failure to warn, the Explosion occurred resulting in the injury and damages alleged herein in amounts to be proved at trial.

**JURY DEMAND and PRAYER**

Pursuant to Utah Rules of Civil Procedure, Rule 38, Plaintiffs demand a trial by jury.

**WHEREFORE**, Plaintiffs pray for judgment against Defendants and each of them as follows:

1. For compensatory damages in an amount to be proven at trial;
2. For prejudgment interest, costs and attorney's fees as permitted by law; and
3. For such other relief as the Court may deem just and fair.

Respectfully submitted this 27<sup>th</sup> day of February, 2015.

COZEN O'CONNOR

By: \_\_\_\_\_  
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Peerless Indemnity Insurance Company; and  
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# ADDENDUM D(3)

*AGCS Marine Insurance Company, et al. v. Adler Hot Oil Service, Inc., et al.*  
Exhibit 1 to Amended Complaint

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# ADDENDUM E

## **Rule 17. Parties plaintiff and defendant.**

**(a) Real party in interest.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Utah. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

**(b) Minors or incompetent persons.** An unemancipated minor or an insane or incompetent person who is a party must appear either by a general guardian or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the minor, insane or incompetent person in the action or proceeding, notwithstanding that the person may have a general guardian and may have appeared by the guardian. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be a minor or an incompetent person.

**(c) Guardian ad litem; how appointed.** A guardian ad litem appointed by a court must be appointed as follows:

(c)(1) When the minor is plaintiff, upon the application of the minor, if the minor is of the age of fourteen years, or if under that age, upon the application of a relative or friend of the minor.

(c)(2) When the minor is defendant, upon the application of the minor if the minor is of the age of fourteen years and applies within 21 days after the service of the summons, or if under that age or if the minor neglects so to apply, then upon the application of a relative or friend of the minor, or of any other party to the action.

(c)(3) When a minor defendant resides out of this state, the plaintiff, upon motion therefor, shall be entitled to an order designating some suitable person to be guardian ad litem for the minor defendant, unless the defendant or someone in behalf of the defendant within 21 days after service of notice of such motion shall cause to be appointed a guardian for such minor. Service of such notice may be made upon the defendant's general or testamentary guardian located in the defendant's state; if there is none, such notice, together with the summons in the action, shall be served in the manner provided for publication of summons upon such minor, if over fourteen years of age, or, if under fourteen years of age, by such service on the person with whom the minor resides. The guardian ad litem for such nonresident minor defendant shall have 21 days after appointment in which to plead to the action.

(c)(4) When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

**(d) Associates may sue or be sued by common name.** When two or more persons associated in any business either as a joint-stock company, a partnership or other association, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may sue or be sued by such common name. Any judgment obtained against the association shall bind the joint property of all the associates in the same manner as if all had been named parties and had been sued upon their joint liability. The separate property of an individual member of the association may not be bound by the judgment unless the member is named as a party and the court acquires jurisdiction over the member.

**(e) Action against a nonresident doing business in this state.** When a nonresident person is associated in and conducts business within the state of Utah in one or more places in that person's own name or a common trade name, and the business is conducted under the supervision of a manager, superintendent or agent the person may be sued in the person's name in any action arising out of the conduct of the business.

**(f)** As used in these rules, the term plaintiff shall include a petitioner, and the term defendant shall include a respondent.



