

2001

# John Richards v. State of Utah Department of Corrections : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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JOHN RICHARDS,

Plaintiff/Appellant,

vs.

STATE OF UTAH DEPARTMENT OF  
CORRECTIONS DIVISION OF  
CORRECTIONAL INDUSTRIES, and  
WASTE MANAGEMENT OF UTAH,  
INC.,

Defendants/Appellees.

Appeal No. 20010987-CA

**Priority No. 15**

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APPELLANT'S BRIEF

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Appeal from Decision of the  
Third Judicial District Court  
Salt Lake County, State of Utah  
The Honorable L.A. Dever

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ORAL ARGUMENT REQUESTED

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## **STATEMENT OF JURISDICTION**

The Utah Court of Appeals has jurisdiction over the above-entitled matter pursuant to § 78-2-2 UTAH CODE ANN. (1953) as amended and by transfer from the Utah Supreme Court pursuant to § 78-2-2(4) and Rule 3 Utah Rules of Appellate Procedure.

## **ISSUES PRESENTED FOR REVIEW**

1. Did the trial court err in ruling that the vocational training program administered by the Division of Correctional Industries as a profit oriented business conducted outside of prison facilities enjoys governmental immunity because it was a) a governmental function and b) the injuries “arose out of” or occurred “in connection” with John Richards’ incarceration at the Utah State Prison?

2. Did the trial court err in ruling that John Richards may not bring an action against the State of Utah for violation of his rights under the Eighth Amendment of the United States Constitution.

3. Did the trial court err in ruling that John Richards Complaint failed to state a claim for damages for a violation of Article I, Section 9, of the Utah Constitution.

Each of the issues presented for review is to be decided under the following Standard of Review. When reviewing a judgment entered on a motion to dismiss under Rule 12(b)(6) Utah Rules of Civil Procedure, the Court of Appeals is obliged to construe the complaint in the light most favorable to the plaintiff and indulge all reasonable inferences in its favor. Heiner v. S.J. Groves & Sons Co., 790 P.2d 107 (Utah App. 1990). Additionally, a motion

to dismiss under Rule 12(b)(6) Utah Rules of Civil Procedure will be affirmed only if it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts which could be proven in support of its claims. Prows v. State, 822 P.2d 764 (Utah 1991). Also, when reviewing a dismissal under Rule 12(b)(6) Utah Rules of Civil Procedure, the court must accept the material allegations of the complaint as true, and the trial court's ruling should only be affirmed if it clearly appears that the plaintiff can prove no set of facts in support of its claim. Colman v. Utah State Land Bd., 795 P.2d 622 (Utah 1990). The trial court should receive no deference as a Rule 12(b)(6) Utah Rules of Civil Procedure dismissal is a question of law, and reviewed under a correctness standard. St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194 (Utah 1991).

**CONSTITUTIONAL PROVISION AND STATUTES WHOSE  
INTERPRETATION IS DETERMINATIVE ON APPEAL**

**UNITED STATES CONSTITUTION**

**Amendment VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**UTAH CONSTITUTION**

**Article I, Section 9. [Excessive bail and fines -- Cruel punishments.]**

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

**Utah's Governmental Immunity Act**

63-30-10, UTAH CODE ANN.      Waiver of immunity for injury caused by negligent act or omission of employee -- Exceptions. - Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of, in connection with, or results from: . . .

(10)    the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;

## **STATEMENT OF THE CASE**

This action involves a serious permanent injury suffered by John Richards while participating in a vocational training program administered by Utah Correctional Industries. John Richards was an inmate at Utah State Prison in its minimum security facility in Bluffdale, Utah. Mr. Richards participated in a work release program providing vocational training and administered by Utah Correctional Industries. Utah Correctional Industries is a for profit division of the Utah State Department of Corrections organized under the authority of the Utah Correctional Industries Act § 64-13a-1 et seq.

Pursuant to § 63-13a-2, the Utah State Legislature created a Division of Correctional Industries as a profit oriented organization designed to generate revenue for its operations and capital investment and assuming responsibility for training offenders in general work habits, work skills, and specific training skills that increase their employment prospects when released and provide an environment for the operation of a correctional industries that closely resembles the environment for the business operations of a private corporate entity.

At the time of his injury, Mr. Richards was participating in the Utah Correctional Industries program at Waste Management of Utah's facility in West Jordan. The program participants were unsupervised and untrained in the operation of heavy equipment and machinery. While at Waste Management's facility, Mr. Richards sustained a serious injury when a forklift driven by an unlicensed, untrained inmate overturned onto his leg resulting in the amputation of one foot and serious injury to his other foot.

John Richards brought suit against the Waste Management of Utah and against Utah Correctional Industries, a division of the State of Utah Department of Corrections alleging negligence claims against the Division of Correctional Industries, and claims for violation of his Eighth Amendment rights under the United States Constitution and under Article I, Section 9 of the Utah State Constitution. The State of Utah Department of Corrections, Division of Correctional Industries filed its Motion to Dismiss the Complaint of John Richards against it. The trial court Judge L.A. Dever granted the State of Utah's Motion to Dismiss without a Memorandum Decision dismissing Count I and Count III of John Richards' Complaint against the State of Utah Department of Corrections Division of Correctional Industries and certifying that the dismissal of the Complaint was a final judgment pursuant to Rule 54(b) Utah Rules of Civil Procedure on November 6, 2001. Plaintiff, John Richards, appealed the dismissal of his Complaint against the State of Utah Department of Corrections Division of Correctional Industries on December 5, 2001.

### **STATEMENT OF FACTS**

For purposes of determining the correctness of the trial court's decision in this matter, the following facts must be accepted as true as alleged in Plaintiff's Complaint.

1. John Richards was an inmate of the Utah Department of Corrections at the Utah State Prison under the care, custody, and subject to the supervision of the Utah State Department of Corrections. (R.3).

2. On July 17, 2000, John Richards was engaged in a training program administered by the Division of Correctional Industries at a private facility owned and operated by Waste Management located at 8652 South 4000 West, West Jordan, Utah. (R.3).

3. The Division of Correctional Industries allowed inmates participating in the vocational training to operate equipment, including a forklift, without appropriate training, certification, or any supervision. A forklift, being operated by a fellow inmate of the Department of Corrections, overturned onto Plaintiff, John Richards. (R.3).

4. As a result of injuries received by the overturned forklift, John Richards has serious and permanent injuries to his legs, including the subsequent amputation of his left foot. (R.3).

5. The Utah State Department of Corrections Division of Correctional Industries knew or had reason to know that the inmates participating in the vocational training program were not properly trained or certified to operate forklifts. Utah Correctional Industries failed to properly train and supervise the inmates during their training program or require them to receive proper training and certification in the use of forklifts, which created a dangerous work environment. (R.4).

6. The Utah State Department of Corrections, Division of Correctional Industries failed to warn John Richards about the dangerous conditions that were created by the lack of any supervision, training, or certification of the inmates participating in the program. John Richards had a legitimate expectation that if you participated in the vocational training

program for the Division of Correctional Industries, that they would create a safe and suitable training environment. The Division of Correctional Industries and Department of Correction failed to implement and provide appropriate and adequate training to inmates in the operation of the forklift and failed to require proper certification of the inmates before they operated the forklift. (R.3).

### **SUMMARY OF ARGUMENT**

Utah correctional Industries does not perform a core governmental function and therefore does not enjoy governmental immunity. Rather, Utah Correctional Industries is a proprietary vocational training program organized to generate profits. It does not perform a function essential to government nor does it provide a service that only the State may provide.

Even if Utah Correctional Industries performs a core governmental function, immunity for John Richards' injuries has been waived § 63-30-10 UTAH CODE ANN. waives immunity for the negligent acts or omissions of an employee of a governmental entity. While John Richards was still completing his sentence at the Utah State Prison minimum security facility at the time he was injured, his injuries did "arise out of" or "in connection with" any incarceration in the prison.

John Richards was injured while working at Waste Management, a private business located in West Jordan, Utah. He was not confined or incarcerated at the time of his injury. Mr. Richards' injury did not arise out of the operation of the prison or is it connected to the



operation of the prison. Mr. Richards was unsupervised, unrestricted, and untrained while participating in an off-site vocational training program of Utah Correctional Industries. Therefore, no exception to the waiver of immunity applies to Utah Correctional Industries' activities in this case.

The Eighth Amendment to the United States Constitution and Article I, Section 9 of the Utah Constitution protect John Richards from cruel and unusual punishment, including the deliberate indifference to the health and safety of prison inmates. By knowingly placing John Richards in a dangerous work environment with untrained, unqualified, and unsupervised inmates operating dangerous heavy equipment, Utah Correctional Industries violated the constitutional protections guaranteed Mr. Richards. As a result, Mr. Richards suffered serious permanent injuries.

The Eighth Amendment to the United States Constitution and Article I, Section 9 of the Utah Constitution are self-executing provisions that do not require separate enabling legislation to bring a claim for damages resulting from the violation. If the Court dismisses Mr. Richards' other claims against Utah Correctional Industries, he has no other available remedy and is therefore entitled to bring his damage claims for violation of his constitutional rights. The trial court erred in dismissing Mr. Richards' Complaint against Utah Correctional Industries.

## ARGUMENT

The Complaint contains three causes of action; (1) negligence against the Utah Correctional Industries; (2) negligence against Waste Management of Utah; and (3) constitutional violations against Utah Correctional Industries under the Eighth Amendment of the United States Constitution and Article I, Section 9 of the Utah Constitution. The Defendant, State of Utah Department of Correction Division of Correctional Industries, filed its Motion to Dismiss pursuant to Rule 12(b)(6) Utah Rules of Civil Procedure, the first and the third claims, alleging that the Complaint of John Richards failed to state a claim against the Division of Correctional Industries. The trial court erred in dismissing John Richards' Complaint against the Division of Correctional Industries.

### **I. PLAINTIFF'S FIRST CAUSE OF ACTION IS NOT BARRED BY THE UTAH GOVERNMENTAL IMMUNITY ACT.**

Utah Correctional Industries does not enjoy any immunity from suit under Utah's Governmental Immunity Act. Section 63-30-3 UTAH CODE ANN. specifically provides "(1) except as may be otherwise provided in this chapter all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, . . . ." (Emphasis added). Utah Courts have consistently held that when a governmental agency engages in a non-governmental function or "non-core" governmental function, it does not enjoy immunity.

**A. Utah Correctional Industries Does Not Engage in a Governmental Function and Therefore Does Not Enjoy Immunity.**

In 1980, the Utah Supreme Court enunciated a two-part test for determining if a governmental activity enjoys governmental immunity in Standiford v. Salt Lake City Corp., 605 P.2d 1230 (Utah 1980). The Standiford court identified a distinction between a core governmental function and a non-core governmental function. If a governmental activity is of such a unique nature that it can only be performed by a governmental agency, or if it is essential to the core of governmental activity, it is a core governmental activity and immunity normally applies. However, if it is not a core governmental activity, the state will not enjoy immunity in that activity. 605 P.2d 1230, 1236-1237 (Utah 1980). The activity in question in this case is not a core governmental function. In Johnson v. Salt Lake City Corp., 629 P.2d 432 (Utah 1981), the Utah Supreme Court explained this further stating:

The first part of the Standiford test - activity of such a unique nature that it can only be performed by a governmental agency — does not refer to what government *may* do, but rather to what government alone *must* do. . . . [T]he second part of the Standiford test - essential to the core of governmental activity — which refers to those activities not unique in themselves but essential to the performance of those activities that are uniquely governmental.

629 P.2d 432, 434.

Ledfors v. Emery County School District, 849 P.2d 1162 (Utah 1993) also recognized the necessity of finding the existence of a core governmental function before a claim of immunity is justified. Ledfors' first requirement in a three step analysis to determine if the government is entitled to immunity, asked "was the activity the entity performed a

governmental function and therefore immunized from suit by the general grant of immunity contained in § 63-30-3?” 849 P.2d at 1166 (Utah 1993). The Court recognized in Condemarin v. University Hospital, 775 P.2d 348 (Utah 1989), that the Utah Constitution imposes limits on a legislature’s authority to immunize all governmental actions from suit. That immunity is limited to a governmental function. The Supreme Court reiterated the limitation on governmental immunity in Lyon v. Burton, 5 P.3d 616 (Utah 2000). The Court recognized that the threshold question in determining whether there is governmental immunity pursuant to § 63-30-3(1) is to determine whether the activity is a “governmental function.” If the activity is a proprietary or a non-essential governmental function, then the Constitution prevents that immunity from applying.

The first step in the analysis then is to determine if the Division of Correctional Industries performs an activity of such a unique nature that it can only be performed by a governmental agency. The second part of the Standiford test is to determine whether the activity is essential to a core governmental activity. The Division of Correctional Industries fails on both prongs of the test.

The Division of Correctional Industries’ enabling statute states:

It is the intent of the Legislature in this chapter to:

- (1) create a Division of Correctional Industries which:
  - (a) is a self supported organization;
  - (b) is profit-oriented;
  - (c) generates revenue for its operations and capital investment;
- and

- (d) assumes responsibility for training offenders in general work habits, work skills, and specific training skills that increase their employment prospects when released;
- (2) provide an environment for the operation of correctional industries that closely resembles the environment for the business operations of a private corporate entity;
- (3) make the Division of Correctional Industries responsible for and accountable to the Legislature and to the governor for correctional industries programs in this state.

§ 64-13a-2 UTAH CODE ANN.

It is clear that the Division of Correctional Industries did not act in a core governmental function. Its motive is expressly stated as “for profit.” Its work is not work that the “government alone *must* do,” nor is the training program, essential to a core governmental activity. Stepping into the private sector to provide inmates at the Utah State Prison vocational training is not a core governmental function. It is also not an activity that “government alone must do.” While operation of a prison may be a core governmental activity, the training of inmates in “general work habits, work skills and specific training skills” is not essential to the operation of the prison. The Division of Correctional Industries’ training program, therefore, completely fails to meet the requirements for immunity set forth by Standiford and Johnson. Because of this, the State, in this non-core governmental activity, is not entitled to immunity. In addition, the language of the enabling statute requires that the Division of Correctional Industries’ operation “closely resemble[] the environment for the business operations of a private corporate entity,” which includes responsibility for injuries

due to improper conditions, improper procedure, improper administration, failure to adequately train and supervise, or any other form of negligence.

Other factors, which the courts have identified to use in determining if the activity is a core governmental function, include the mandatory nature of the government activity. Thomas v. Clearfield City, 642 P.2d 737 (Utah 1982). Certainly, it is not mandatory that the government compete in the market as a for-profit vocational training agency. A second factor is whether the activity can be performed by an entity other than the government. If it can, and such training services certainly can, then the activity is not an essential governmental function entitled to immunity. Duncan v. Union Pacific Railroad Co., 842 P.2d 832, 839 (Utah 1992) (J. Stewart dissent). Associated with these considerations is the principle that government, in its proprietary activities, is not protected by immunity. “Where a public body, which would otherwise be entitled to sovereign immunity, engages in activity of a commercial or proprietary character, the protection does not exist.” Nestman v. South Davis Water Imp. Dist., 398 P.2d 203, 205 (Utah 1965). The enabling legislation for Utah Correctional Industries makes it clear it is simply a commercial enterprise of the State of Utah providing a non-essential, proprietary function not entitled to immunity.

**B. The Plaintiff’s injury did not “arise out of” or occur “in connection with” the Plaintiff’s incarceration at the Utah State Prison.**

Utah Correctional Industries claims immunity under § 63-30-10(10) UTAH CODE ANN., which makes inapplicable a waiver of immunity for a negligent act or omission of an employee “if the injury arises out of, in connection with, or results from: (10) the

incarceration of any person in any state prison, county or city jail, or other place of legal confinement.”

Contrary to the Defendant’s contentions, simply because a person is confined at night in a minimum security facility, every event that occurs while serving his sentence does not “arise out of” or is necessarily “connected with” his incarceration. The terms “arise out of” and “in connection with,” are not without limits. The injury of Mr. Richards does not “arise out of” or “in connection with” Mr. Richards’ incarceration.

The Utah Supreme Court in Taylor v. Ogden School Dist., 927 P.2d 159 (Utah 1996), had an opportunity to interpret the use of the words “arising out of” in a similar exception to the waiver of immunity where the injury “arises out of assault.” UTAH CODE ANN. § 63-30-10(1)(b). The court in Taylor acknowledged that the words “arises out of” import a concept of causation. Citing to National Farmers Union Property and Casualty Co. v. Western Casualty and Surety Co., 557 P.2d 961, 963 (Utah 1978)

The words “arising out of” are very broad, general and comprehensive. They are commonly understood to mean originating from, growing out of, or flowing from, and required only that there be some causal relationship between the injury and the risk [provided for].

557 P.2d at 963.

In other words, the court stated the injuries must have originated from, grown out of, or flowed from the assault.

Likewise, in this case, Mr. Richards’ injuries must have originated from, grown out of, or flowed from his incarceration. While Mr. Richards was still fulfilling his sentence

with the Utah State Prison at the time of the incident, his injuries did not arise from, grow out of, flow from, or have any causal connection with any “incarceration” as identified in Utah’s exception to waiver of immunity. Webster’s dictionary defines “incarcerate” as to imprison, to confine in jail, to shut up, or enclose. Mr. Richards injury occurred while he was off the premises of Utah Department of Corrections, while he was “at large” without supervision or restraint. He was engaging in a vocational training program administered by Utah Correctional Industries a “for profit” division of the State of Utah. Those activities are neither an “incarceration” nor do they arise out of or in connection with his “incarceration.”

Injuries resulting from a fight with another prisoner in prison, injuries occurring in the prison hospital, and injuries resulting from any activity or condition necessary or inherent in the administration, security, or confinement in the Utah State Prison facility would originate, grow out of, or flow from the incarceration, and have been so recognized by the courts. See Sheffield; Madsen v. State, 583 P.2d 92 (Utah 1978); Schmitt v. Billings, 600 P.2d 516 (Utah 1979); Lancaster v. Utah State Prison, 740 P.2d 261 (Utah 1987); Ross v. Schackel, 920 P.2d 1159 (Utah 1996). The circumstances resulting in the injuries, in this case, however, are materially different and easily distinguished from the circumstances above. Mr. Richards’ injuries did not occur because of the incarceration or because of anything connected with, or to be expected from the administration of a prison, or incarceration of individuals within the prison. The injuries in this case occurred during an unsupervised training program, off prison grounds, at a private firm’s warehouse.



Section 64-90-1, UTAH CODE ANN., sets out a program by which the Department of Corrections can develop job opportunities to enhance rehabilitation of inmates at the Utah State Prison. Those legislative provisions provide for the creation of work programs within the prison facility for the purpose of creating job opportunities for inmates within a secure correctional facility. In addition, § 64-13-1, UTAH CODE ANN., defines a correctional facility to mean any facility operated to house offenders, either in a secure or non-secure setting and further provides the definition of a secure correctional facility as “secure correctional facility means any prison, penitentiary, or other institution operated by the department or under contract for the confinement of offenders, where force may be used to restrain them if they attempt to leave the institution without the authorization.” Section 64-13-1(9) (emphasis added). Section 64-13-14 UTAH CODE ANN., goes on to provide that “the department [of corrections] shall maintain and operate secure correctional facilities for the incarceration of offenders.” If Mr. Richards’ injuries had occurred at the prison facility while engaged on a work program administered by the Utah Department of Corrections under § 64-9b-1 et seq. UTAH CODE ANN. or while working at a secure correctional facility for the incarceration of offenders, then the exception to waiver of immunity may apply. None of those circumstances occurred in this case.

Mr. Richards was injured while participating in an off-site, unsupervised training program operated pursuant to § 64-13a-1 et seq., the Utah Correctional Industries Act. Any relationship of Mr. Richards’ injury to his “incarceration” within any facility for the

confinement of prisoners in the State of Utah is so remote as to not be the cause of his injury. Rather, the injury in this case arises out of Mr. Richards' work performed at Waste Management and the operation of a forklift by an untrained and unsupervised operator of the forklift. Mr. Richards was neither confined nor incarcerated at the time of his injury. He was, in fact, unsupervised and essentially at large within the community. Therefore, the exception to the immunity for negligence of an employee of the State of Utah has been waived for Mr. Richards' injury.

Utah Correctional Industries claims this case is akin to Sheffield v. Turner, 455 P.2d 367 (Utah 1968), where a prisoner was injured at the hands of other prisoners, but had his negligence claim against the State denied because of immunity. Utah Correctional Industries fails to acknowledge, however, that the injury that occurred in Sheffield arose directly from his incarceration. In Sheffield, the fight occurred at the prison and the allegations of negligence concerned a challenge to the methods of "incarceration" and the security provided within the prison facility. In our case, however, the danger to Mr. Richards was, in fact, created by the acts and omissions of the Utah Correctional Industries for the off-site work program by allowing heavy machinery to be used by the participants and allowing other participants to work in the vicinity of the heavy machinery without any training or supervision. The administrators knew or should have known that this could lead to serious injury or the death of those involved, but nevertheless, allowed the conditions to continue. The injury to Mr. Richards did not arise out of the incarceration, but rather, because the

administrators of the off-site work program created a dangerous situation, and then placed inmates in that dangerous situation where the Plaintiff was severely injured.

Utah Correctional Industries relies on Kirk v. State, 784 P.2d 1255 (Utah App 1989) in support of its claims that governmental immunity has not been waived in this case. The factual circumstances in Kirk are dramatically different from the circumstances in Mr. Richards' injury. In Kirk, a court bailiff was injured when an inmate in the custody and control of the prison being transported to court obtained a gun and shot plaintiff, Mr. Kirk. The court in Kirk applied prior rulings of this court that the retention of immunity provision includes a situation where the injury is caused by an incarcerated person under the control of the state or where the person cannot be released without some kind of permission. See for example Madsen v. State, 583 P.2d 92 (Utah 1978) and Emery v. State, 26 Utah 2d 1 483 P.2d 1296 (1971). The court ruled that the inmate was under the care, custody, and control of the State of Utah during his transportation and therefore the immunity would apply or else under the circumstances of that case, he had escaped their control and was acting on his own therefore the prison owed no specific duty to Mr. Kirk under those circumstances.

The negligence of Utah Correctional Industries in this case is not based on any alleged failure to confine or control a person in their custody. Rather, the claim is that they operated a vocational training program outside of the prison facilities under circumstances when the participating inmates were neither confined nor controlled or in the custody of the Utah Correctional Industries. Mr. Richards' Complaint alleges that Utah Correctional Industries

operated a program using participants who were not confined or “incarcerated” at the time of Mr. Richards’ injury, but in a manner that created a dangerous situation because of Utah Correctional Industries’ failure to properly supervise or train the participants in the vocational training program. In other words, when Utah Correctional Industries engages in a profit-oriented enterprise to provide a vocational training program, outside prison facilities, it owes the participants the duty to train and supervise the program participants so as not to create an unreasonable risk of harm to the individuals participating in the program. The trial court erroneously ruled that the injury to Mr. Richards “arose out of” or “in connection with” his incarceration in the Utah State Prison.

## **II. THE COURT ERRED IN DISMISSING THE PLAINTIFF’S THIRD CLAIM FOR RELIEF UNDER THE U.S. AND UTAH CONSTITUTIONS.**

The Court erred when it dismissed the Plaintiff’s Third Claim for Relief under the Eighth Amendment of the United States Constitution, and Article I, Section 9 of the Utah Constitution. As explained above, to dismiss Mr. Richards’ Complaint pursuant to Rule 12(b)(6) Utah Rules of Civil Procedure, the trial court must have determined that viewing the facts in the light most favorable to the Plaintiff, and indulging all reasonable inferences in the Plaintiff’s favor, there was nonetheless no set of facts that could be proven to support the Plaintiff’s claims. See Colman v. Utah State Land Board, 795 P.2d 622 (Utah 1990); Mounteer v. Utah Power and Light Co., 823 P.2d 1055 (Utah 1991). Under this standard, the Plaintiff’s Third Claim for Relief should not have been dismissed.

**A. Mr. Richards' Claims are Recognized Direct Actions Based on Violations of Self-Executing Constitutional Provisions.**

Mr. Richards may pursue his constitutional tort claims as a direct action. Article I, Section 9 of the Utah Constitution and the Eighth Amendment of the United States Constitution are both self-executing provisions. Bott v. DeLand, 922 P.2d 732, 737-38 (Utah 1996). These provisions do more than simply state general principles, they prohibit specific evils that may be defined and remedied without implementing legislation. Courts have held that a plaintiff may recover monetary damages for violations arising from similar constitutional provisions. Carlson v. Green, 446 U.S. 14, 17, 24, 100 S.Ct. 1468, 1470-71 (1980) (allowing a prisoner's mother to recover damages from prison officials for violating her son's Eighth Amendment rights); Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 91 S.Ct. 1999 (1971) (allowing recovery for damages directly under the Fourth Amendment); Spackman v. Board of Educ. of Box Elder County Sch. Dist., 16 P.3d 533 (Utah 2000).

Utah courts have recognized that an individual may bring a claim for damages arising out of a constitutional tort if the constitutional violation arises from a self-executing clause of the Utah or United States Constitution. See Bott v. DeLand, 922 P.2d 732 (Utah 1996); Spackman v. Board of Educ. of Box Elder County Sch. Dist., 16 P.3d 533 (Utah 2000); Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971); Carlson v. Green, 466 U.S. 14 (1980). The court in Spackman recognized that in Bott v. DeLand, the Utah Supreme Court held that prisoners may collect damages for

violations of the unnecessary rigor or cruel and unusual punishment clauses of Article I, Section 9 of the Utah Constitution. The court in Spackman identified that if a constitutional provision is self-executing, no implementing legislation is necessary in order to bring a direct action for violation of that constitutional provision. The Utah Supreme Court has previously determined that Article I, Section 9 of the Utah Constitution is just such a self-executing constitutional provision. See Bott v. DeLand. The court in Spackman then identified a three-part test to determine whether monetary damages are available for violation of a self-executing constitutional provision such as Article I, Section 9. The court identified a three-part test including

First, a plaintiff must establish that he or she suffered a “flagrant” violation of his or her constitutional rights. Second, a plaintiff must establish that her existing remedies do not redress his or her injuries. Third, a plaintiff must establish that equitable relief, such as an injunction, was and is wholly inadequate to protect the plaintiff’s rights or redress his or her injuries.

Spackman at 438, 439

The allegation of John Richards’ Complaint herein meet all of the criteria identified in Spackman for a claim of damages for violation of Article I, Section 9 of the Utah Constitution and violation of the Eighth Amendment to the United States Constitution.

**i. Equitable relief is inadequate to redress John Richards’ injuries.**

John Richards received serious and permanent injuries including the amputation of one leg and significant injuries to his other leg. Equitable relief, such as injunctive relief, could not redress the injury received by Mr. Richards. No equitable remedy can be fashioned

that would undue the loss of Mr. Richards' leg. Monetary damages is the only way to adequately redress the injury received by Mr. Richards for violation of his constitutional rights.

**ii. Existing remedies do not redress Mr. Richards' injuries**

In the event that the Court determines that Utah Correctional Industries was engaged in a core governmental function at the time Mr. Richards was injured or that Mr. Richards' injuries arise out of or in connection with his incarceration in prison so that Utah Correctional Industries is immune from the negligence claims asserted by Mr. Richards, Mr. Richards would not have available to him any remedy to redress his injuries. The court in Spackman recognized that in the event that there are other meaningful safeguards and remedies available to a claimants who asserts a claim for damages arising out of a constitutional violation that the court will not recognize a damage claim for violation of those constitutional rights. For example, in Spackman the court refers to the case of Bona v. City of Santa Ana, 45 Cal. App 4th 1465, 53 Cal. Rptr. 2d 671, where the California court refused to create a damage remedy for due process violations where there was an alternative common law tort cause of action available to the claimant. Spackman went on to describe that the second requirement is meant to insure that court's use their common law remedial power cautiously and in favor of existing remedies. In the event that the court determines that Utah Correctional Industries is not immune from suit for the negligence claims of Mr. Richards then Mr. Richards would have an existing available remedy and there would be no need to

impose damages for the constitutional violations suffered by Mr. Richards. Otherwise, if Utah Correctional Industries is immune from the negligence claims brought by Mr. Richards, then Mr. Richards would have no other existing remedy available to him for the constitutional violations.

Utah Correctional Industries argues that federal courts have not recognized the common law cause of action against the states by citizens directly under the federal constitution. Thomas v. Shipka, 818 F.2d 496 (6th Cir. 1987). The Thomas court indeed explains that “where a plaintiff states a constitutional claim *under 42 U.S.C. § 1983*, that statute is the exclusive remedy.” Thomas at 499 (emphasis added). John Richards, however, has not brought a claim under § 1983, and cannot bring a claim against Utah correctional Industries under § 1983, therefore, § 1983 is not John Richards’ exclusive remedy. In fact, as Utah Correctional Industries points out, a § 1983 claim cannot be brought against it. It would be a futile exercise to suggest that the John Richards be required to bring his claim against the State under § 1983, only to then have it thrown out. As the court explained in Owens v. Swan, 962 F. Supp 1436 “it has been uniformly held that plaintiffs may not assert a cause of action directly under the constitution, *where the statutory remedy of 42 U.S.C. § 1983 is available to them.*” 962 F.Supp 1436, 1439 (D.Utah 1987) (emphasis added). This means only that, *where § 1983 provides a remedy*, then the Plaintiff may not assert a cause of action directly under the Constitution. In our case, however, § 1983 does not provide a remedy because the State of Utah is not a “person” subject to suit under 42 U.S.C. § 1983.



The Thomas court explains that before Monell v. Dept. of Social Services, 436 U.S. 658 98 S.Ct. 2018 (1978), “municipalities” were not “persons” under § 1983 and, like “states” could not be sued under § 1983. Thomas at 499. Monell, however, changed things by making it possible for Plaintiff’s to sue municipalities under § 1983 by making municipalities “persons” under § 1983. Because of this, the Thomas court held that “it is unnecessary and needlessly redundant to imply a cause of action arising directly under the constitution where congress has already provided a statutory remedy of equal effectiveness through which the Plaintiff could have vindicated her constitutional rights.” Id. at 500. Only because of this background and the fact that the plaintiff in Thomas actually had a remedy under § 1983, did the court conclude that § 1983 is the exclusive remedy for constitutional claims brought by the plaintiff against the city official. “We conclude that the precedents cited above do not preclude us from holding that § 1983 provides the exclusive remedy for constitutional claims brought by the plaintiff in this case against the city official.” Thomas, 818 F.2d at 503.

Mr. Richards does not have 42 USC § 1983 as a remedy available to him against Defendant, a direct claim under the constitution is neither unnecessary nor redundant. Since no remedy is otherwise available to Mr. Richards, the Court should do what the Supreme Court did in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 US 388 (1971). In Bivens, the Supreme Court found it necessary to create a direct cause of action under the constitution because § 1983 does not provide a remedy for constitutional

violations committed by federal officers acting under federal laws, or in our case for constitutional violations by States. Thomas makes clear that before municipalities were brought within the meaning of “persons” under § 1983, the courts allowed direct actions for constitutional violations against municipalities, just as the court should allow a direct action by Mr. Richards against Utah Correctional Industries.

**iii. Mr. Richards suffered a “flagrant” violation of his constitutional rights**

Spackman described the first requirement for allowing a damage claim for constitutional violations as follows:

In essence this means that a defendant must have clearly established constitutional rights “of which a reasonable person would have known . . . ” to be considered clearly established, “the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right . . . ” The requirement that the unconstitutional conduct be “flagrant” insures that a government employee is allowed the ordinary “human frailties of forgetfulness, distractability, or misjudgment without rendering him[him or her]self liable for a constitutional violation.”

Spackman at 538 (citations omitted).

The court in Bott v. DeLand, 922 P.2d 732, discussed these standards under which a prisoner may recover damages under Article I, Section 9 of the Utah Constitution stating that the prisoner must “show[s] that his injury was caused by a prison employee who acted with deliberate indifference or inflicted unnecessary abuse on him.” Bott at 790. The court went on to describe that “the deliberate indifference standard differentiates between inadvertent misconduct, which does not give rise to liability under Article I, Section 9 and unnecessary

or wanton infliction of pain, which does give rise to liability.” For instance, the court recognized that a prison physician would be liable under the deliberate indifference standard for choosing an “easier and less efficacious treatment than professional judgment dictates . . . Likewise, prison guards would be liable for intentionally denying or delaying access to medication or treatment.” Bott at 740.

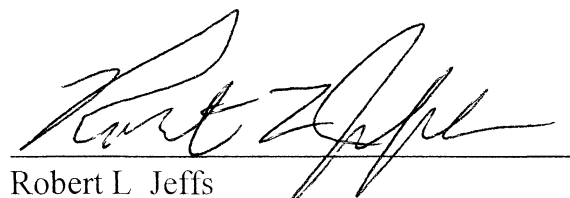
The allegations of John Richards’ Complaint allege more than simply inadvertence or mistake. Rather, the allegations of the Complaint allege wanton disregard for the safety of participants in the vocational training program. As set forth above, Utah law clearly establishes standards for individuals operating heavy commercial machinery and for the conduct of commercial driver training programs within the State of Utah. The Utah Correctional Industries ignored all of the risks and dangers associated with placing inmates in a work environment unsupervised, untrained, and working with heavy equipment and machinery. The conduct of Utah Correctional Industries demonstrates their deliberate indifference to the safety of the participants in the vocational training program. The Complaint of John Richards sufficiently pleads a violation of his constitutional rights and he is entitled to bring the action for damages of those self-executing constitutional provisions. The trial court erred in dismissing Plaintiff’s Complaint in this matter.

## CONCLUSION

The trial court erred in dismissing Mr Richards' Complaint against Utah Correctional Industries Wherefore, it is respectfully requested that this Court reverse the trial court's Order of Dismissal and remand the case for further proceedings

DATED and SIGNED this 5<sup>th</sup> day of April, 2002

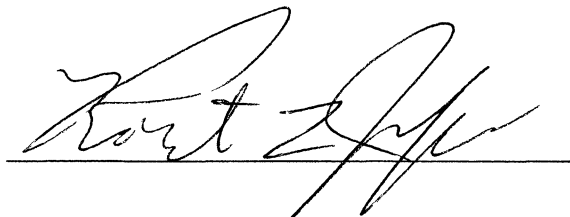
JEFFS & JEFFS, P C

  
Robert L. Jeffs

## CERTIFICATE OF SERVICE

I hereby certify that the original Appellant's Brief was mailed to the Clerk of the Court, in the Utah Court of Appeals and a copy mailed to the below named parties by placing the same in the United States mail, postage prepaid, this 5 day of April, 2002, addressed as follows

Dan R. Larsen  
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Salt Lake City, UT 84114-0856



## **ADDENDUM**

Pursuant to Rule 24(a)(11) of the Utah Rules of Appellate Procedure, an addendum is included herewith

## **ADDENDUM “A”**

THIRD DISTRICT COURT SALT LAKE COURT  
SALT LAKE COUNTY, STATE OF UTAH

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JOHN RICHARDS,	:	
Plaintiff,	:	DEFT STATE OF UTAH MOTION TO
	:	DISMISS
	:	
vs.	:	Case No: 010904922
	:	
STATE OF UTAH DEPARTMENT OF,	:	Judge: L. A. DEVER
Defendant.	:	Date: 10/21/2001

---

Clerk: debbiep

On order of Judge Dever, Deft State of Utah Motion to Dismiss counts I and III of Plf's complaint is granted. c/o deft atty to prepare an order for the court to sign.

Case No: 010904922  
Date: Oct 22, 2001

---

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010904922 by the method and on the date specified.

METHOD	NAME
Mail	ROBERT L. JEFFS ATTORNEY PLA 90 NORTH 100 EAST P.O. BOX 888 PROVO, UT 84603
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Dated this 22 day of October, 2001.


  
\_\_\_\_\_  
Deputy Court Clerk



ORIGINAL

**FILED DISTRICT COURT**  
Third Judicial District

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NOV 06 2001  
By  SALT LAKE COUNTY  
Deputy Clerk

---

IN THE THIRD DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

JOHN RICHARDS,

Plaintiff,

v.

STATE OF UTAH DEPARTMENT OF  
CORRECTIONS DIVISION OF  
CORRECTIONAL INDUSTRIES, and  
WASTE MANAGEMENT OF UTAH,  
INC.,

Defendants.

**ORDER**

Case No. 010904922

Judge L.A. Dever

---

Defendant State of Utah's Motion to Dismiss was presented to the Court for decision pursuant to Rule 4-501(1)(d), Utah Rules of Judicial Administration. For the reasons stated in defendant State of Utah's memoranda, the first and third causes of action in plaintiff's Complaint are dismissed with prejudice. Accordingly, the State of Utah is dismissed as a party to this lawsuit. Pursuant to Rule 54(b), Utah Rules of Civil Procedure,

this Order constitutes a final judgment as to all claims by plaintiff against the State of Utah. The Court expressly determines that there is no just reason to delay a final judgment as to the State of Utah.

DATED this 6 day of November, 2001.

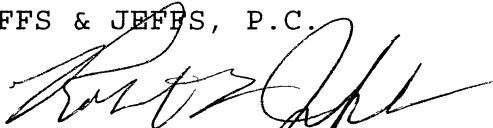
BY THE COURT:

A handwritten signature in black ink, appearing to read "L.A. Dever", written over a horizontal line.

L.A. DEVER  
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM:

JEFFS & JEFFS, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Robert L. Jeffs, written over a horizontal line.

ROBERT L. JEFFS  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing  
**ORDER** was served by mail this 5<sup>th</sup> day of <sup>November</sup>~~October~~, 2001 to the  
following:

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