

2016

**Patrick Liley, Plaintiff and Appellee, v. Utah Department of Transportation, a Division of the State of Utah, Juab County, a Political Subdivision of the State of Utah, Sanpete County, a Political Subdivision of the State of Utah, Cedar Springs Ranch, Inc.**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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**PATRICK LILEY,**

Plaintiff/Appellee

v.

UTAH DEPARTMENT OF  
TRANSPORTATION, a division of the  
State of Utah, JUAB COUNTY, a political  
subdivision of the State of Utah, SANPETE  
COUNTY, a political subdivision of the  
State of Utah, **CEDAR SPRINGS  
RANCH, INC.**, a Utah Corporation, and  
DALE DORIUS, an individual,

Defendants/Appellants.

**BRIEF OF APPELLEE  
PATRICK LILEY**

**Appellate Case No. 20150267-CA**

**District Court Case No. 120600012**

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Appeal of Judgment Upon Jury Verdict  
In the Fourth Judicial District Court of Utah County, State of Utah  
The Honorable Jennifer A. Brown, Presiding

---

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## TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF JURISDICTION.....	1
ISSUES PRESENTED ON APPEAL.....	1
STANDARDS OF REVIEW.....	3, 5, 7
CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS .....	8
STATEMENT OF THE CASE.....	8
I.    Nature of the Case.....	8
II.   Disposition Below.....	8
III.  Statement of Facts and Marshalling of Evidence.....	8
A. THE COLLISION WITH THE BLACK ANGUS COW.....	10
B. DENIAL OF CSR’S MOTION FOR SUMMARY JUDGMENT.....	12
C. THE TRIAL COURT’S OPENING INSTRUCTIONS TO THE JURY.....	13
D. OPENING STATEMENTS OF LILEY, UDOT, AND CSR.....	14
E. LILEY’S CASE-IN-CHIEF EVIDENCE.....	16
i. Liley’s Testimony.....	16
ii. Frank Pippy’s Testimony.....	17
iii. Trooper Jared Jensen’s Testimony.....	19

iv. Testimony of Dale Dorius.....	20
F. CSR’S DIRECTED VERDICT MOTION.....	21
G. THE JURY INSTRUCTIONS RELATED TO DUTY AND CONTROL.....	23
H. CLOSING ARGUMENTS OF LILEY AND CSR.....	25
SUMMARY OF ARGUMENTS.....	26
ANALYSIS.....	28
I. THE QUESTION OF WHETHER CSR HAD A DUTY KEEP ITS FENCES IN GOOD REPAIR WAS PROPERLY SUBMITTED TO THE JURY.....	28
A. The Trial Court Properly Denied CSR’s Motion for Summary Judgment.....	28
B. The Trial Court Properly Denied CSR’s Motion for a Directed Verdict.....	31
II. CSR CANNOT ATTACK THE OPENING AND CLOSING STATEMENTS OF LILEY’S COUNSEL WHEN CSR FAILED TO OBJECT TO LILEY’S OPENING OR CLOSING STATEMENTS AT TRIAL.....	35
III. THERE IS NOTHING IN THE RECORD TO SUGGEST THAT THE JURY FAILED TO HEED AND FOLLOWED THE JURY INSTRUCTIONS ISSUED BY THE TRIAL COURT.....	36
IV. CSR’S STIPULATION TO JURY INSTRUCTIONS 6 AND 7 CONCEDED THAT CSR HAD A DUTY AND THE ABILITY TO CONTROL WCR.....	37
V. CSR’S LIABILITY IS NOT LIMITED TO A FINDING THAT CSR VIOLATED UTAH’S SAFETY LAW.....	38

VI.	THE TRIAL COURT DID NOT FIND THAT CSR WAS UNDER A GREATER DUTY THAN ANY OTHER LANDOWNER.....	39
VII.	CSR FAILED TO PRESERVE ANY ISSUE AS TO THE CONSISTENCY OF THE JURY'S VERDICT.....	39
	CONCLUSION.....	40
	REQUEST FOR ORAL ARGUMENT.....	41
	CERTIFICATE OF COMPLIANCE.....	42
	CERTIFICATE OF SERVICE.....	43

## TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
<i>438 Main Street v. Easy Heat, Inc.</i> , 2004 UT 72.....	6, 35, 40
<i>Anderson Dev. Co. v. Tobias</i> , 2005 UT 36.....	3, 5
<i>Baczuk v. Salt Lake Regional Med. Ctr.</i> , 2000 UT App 225.....	29
<i>Bennion v. LeGrand Johnson Constr. Co.</i> , 701 P.2d 1078, 1083 (Utah 1985).....	7
<i>Billings v. Union Bankers Ins. Co.</i> , 819 P.2d 803, 803 (Utah 1991).....	3, 5
<i>Brewer v. Denver &amp; Rio Grande W. R.R.</i> , 2001 UT 77.....	31
<i>Crookston v. Fire Ins. Exch.</i> , 817 P.2d 789, 799 (Utah 1991).....	7
<i>Fay v. Rodgers</i> , 2010 UT App LEXIS 28.....	32
<i>Gonzalez v. State</i> , 2015 UT 10.....	4, 6
<i>Hahnel v. Duchesne Land, LC</i> , 2013 UT App 150.....	36
<i>Hone v. Advanced Shoring &amp; Underpinning, Inc.</i> , 2012 UT App 327.....	3, 5, 28
<i>Hunt v. Hurst</i> , 785 P.2d 414, 415 (Utah 1990).....	29
<i>Kerr v. Salt Lake City</i> , 2013 UT 75.....	3, 5, 28
<i>M.B. v. J.B.</i> , 2007 UT App 286.....	6, 40
<i>Mahmood v. Ross</i> , 1999 UT 104.....	4
<i>Neff v. Neff</i> , 2011 UT 6.....	7, 34
<i>Rahofy v. Steadman</i> , 2012 UT 70.....	2, 29
<i>Riggs v. Asbestos Corp.</i> , 2013 UT App 86.....	7
<i>Schreib v. Whitmer</i> , 2016 UT App 61.....	31
<i>State v. Bowen</i> , 143 P. 134, 135 (Utah 1914).....	2

<i>State v. Burk</i> , 8239 P.2d 880, 883 (Utah Ct. App. 1992).....	36
<i>State v. Cheek</i> , 2015 UT App 243.....	37
<i>State v. Hawkins</i> , 2016 UT App 9.....	4, 6
<i>State v. Menzies</i> , 889 P.2d 939, 401 (Utah 1994).....	36
<i>State v. Nielsen</i> , 2014 UT 10.....	4, 6, 31
<i>State v. Pena</i> , 869 P.2d 932, 935-940 (Utah 1994).....	6
<i>State v. Phathamavong</i> , 860 P.2d 1001, 1003-1004 (Utah Ct. App. 1993).....	31
<i>State v. Rangel</i> , 866 P.2d 607, 611 (Utah Ct. App. 1993).....	6, 35, 40
<i>State v. Toki</i> , 2011 UT App 293.....	36
<i>State v. Winfield</i> , 2006 UT 4.....	37
<i>Stephenson v. Warner</i> , 581 P.2d 567, 568-569 (Utah 1978).....	3, 26, 29
<i>T.H. v. State</i> , 2004 UT App 483...40	
<i>Van Der Heyde v. First Colony Life Ins. Co.</i> , 845 P.2d 275, 280 (Utah Ct. App. 1993)..	34
<i>White v. Kent Medical Ctr. Inc.</i> , 810 P.2d 4, 8 (Wash. Ct. App. 1991).....	31
<i>Zavala v. Zavala</i> , 2016 UT App 6.....	6, 40

## STATUTES

UTAH CODE ANN. § 41-6a-407(1)(a).....	1, 8
UTAH CODE ANN. § 78A-4-103(2)(j).....	1

## RULES

UTAH R. APP. P. 24(a)(9).....	31
UTAH R. APP. P. 24(b)(1).....	1
UTAH R. APP. P. 24(f)(1)(B).....	42



UTAH R. APP. P. 27(b).....	42
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Plaintiff/Appellee Patrick Liley ("Liley"), by through his counsel, respectfully submits this Appellee's Brief.

### **STATEMENT OF JURISDICTION**

This Court has jurisdiction over this appeal pursuant to UTAH CODE ANN. § 78A-4-103(2)(j).

### **ISSUES ON APPEAL AND STANDARDS OF REVIEW**

Pursuant to Rule 24(b)(1) of the Utah Rules of Appellate Procedure, Liley disagrees with Cedar Springs Ranch, Inc.'s (the "CSR") Statement of the issues on appeal and the standards of review. Liley submits that the statements of the issues and standards of review set forth below are what should govern CSR's appeal.

**ISSUE 1:** CSR asserts that the trial court "essentially" ruled as a matter of law that a landlord possesses the cows grazing on the landlord's land for purposes of UTAH CODE ANN. § 41-6a-407(1)(a) (the "Safety Law"). The trial court made no such ruling. The trial court found that evidence existed to suggest that CSR had "some duty to control the actions of its tenant," and the trial court opined that CSR's duty could be impacted by the fact CSR and tenant Warm Creek Ranch, Inc. ("WCR") are both owned and controlled by Dale Dorius. The trial court therefore denied summary judgment on the question of duty and allowed trial to proceed on the question of the scope of CSR's duty versus WCR's duty. After Liley presented his case-in-chief at trial, the trial court then found there was sufficient evidence to support a finding that CSR was at fault to put the question to the jury, and the trial court explicitly noted that CSR intended to allocate fault to WCR for the cow being on the highway. The trial court stated,

I do find that a landlord does have some duty to control the actions of its tenant, and I would say that at least in this case I would think that duty perhaps is slightly greater given the close interrelationship of the parties.

And so unlike the directed verdict for UDOT, I am going to find that there is sufficient competent evidence to go to the jury on the issue of negligence with regard to Cedar Springs Ranch. And I note in making this decision that there's already been an indication of an intent to allocate fault to Warm Springs which Cedar Springs still has available to it in this action. And so I'm going to deny the motion for the directed verdict, and we'll move forward on that basis.

R. 1310:23-1311:12 (emphasis supplied). This ruling by the trial court demonstrates that the Court did not rule on the scope of CSR's duty. The trial court left the question open for the parties to litigate at trial. Consequently, whether CSR had a duty to control the cattle sufficient to trigger liability under the Safety Law was a question of fact for the jury. *Rahofy v. Steadman*, 2012 UT 70, ¶ 21 (possession or control of medical records is ultimately a question of fact); *State v. Bowen*, 143 P. 134, 135 (Utah 1914) (what constitutes recent possession of a cow is a question of fact).

Among the evidence that the jury had to consider in deciding that question was whether to believe the self-serving and uncorroborated testimony of Dorius that an oral agreement regarding fence maintenance had been adopted over 40 years earlier, and whether any fence maintenance agreement between CSR and WCR (both of which were controlled by Dorius) was so comprehensive that it relieved CSR of any duty to maintain its fences during the eight months of the year that WCR was not in residence on the property. The testimonial and photographic evidence introduced at trial established that the fence was full of holes big enough for cattle to pass through and those holes and the general disrepair of the fence had been in existence far longer than WCR's most recent

tenancy. This evidence of fencing negligence that predates WCR's tenancy at the time of the collision was particularly germane given that the *Stephenson v. Warner* case that CSR relies upon states that a tenant's liability for a dangerous condition on leased property only extends to conditions that were created by tenant or allowed to occur by the tenant during the tenancy. 581 P.2d 567, 568-569 (Utah 1978).

Liley submits that CSR's Issue No. 1 should state: Did the trial court correctly find that sufficient evidence was presented to allow a jury to determine whether CSR was at fault to any degree for failing to ensure that its own fencing was adequately maintained year to year to prevent cows from entering the highway when cows were on the property?

**STANDARD OF REVIEW:** Because CSR challenges the trial court's summary judgment and directed verdict rulings, two separate standards are applicable.

As to summary judgment, appellate courts normally review a grant or denial of a motion for summary judgment "in the light most favorable to the non-moving party." *Anderson Dev. Co. v. Tobias*, 2005 UT 36, ¶ 31 (quoting *Billings v. Union Bankers Ins. Co.*, 819 P.2d 803, 803 (Utah 1991)). But when a motion for summary judgment is denied due to the presence of factual issues and a trial then takes place, appellate courts will forego any review the summary judgment ruling. *Kerr v. Salt Lake City*, 2013 UT 75, ¶¶ 11, 29. *See also Hone v. Advanced Shoring & Underpinning, Inc.*, 2012 UT App 327, ¶ 6.

With regard to the trial court's denial of a directed verdict, the standard of review is more deferential to the trial court than CSR portrays. The standard of review is as follows:

When an appellant challenges the denial of a motion for directed verdict based upon the sufficiency of the evidence, 'the applicable standard of review is highly deferential.' 'A defendant must overcome a **substantial**



**burden** on appeal to show that the trial court erred in denying a motion for directed verdict.'

*State v. Hawkins*, 2016 UT App 9, ¶ 32 (first quoting *State v. Nielsen*, 2014 UT 10, ¶ 30; then quoting *Gonzalez v. State*, 2015 UT 10, ¶ 27) (emphasis supplied). A more detailed description of that standard of review reads:

Under Utah law, a party who moves for a directed verdict has the very difficult burden of showing that *no* evidence exists that raises a question of material fact. If there is any evidence raising a question of material fact, judgment as a matter of law is improper. Thus, a motion for a directed verdict is only appropriate when the court is able to conclude, as a matter of law, that reasonable minds would not differ on the facts to be determined from the evidence presented. When considering a motion for a directed verdict, the trial court must consider the evidence in the light most favorable to the party moved against; however, the court is not free to weigh the evidence and thus invade the province of the jury, whose prerogative it is to judge the facts.

*Mahmood v. Ross*, 1999 UT 104, ¶ 18 (first emphasis in original, internal citations and quotations omitted).

**ISSUE 2:** CSR attempts to portray the trial court's comments on the question of duty as somehow constituting a ruling that CSR and WCR were alter egos of one another and that CSR owed a heightened duty as a result. In reality, the trial court was very careful to avoid ruling on the relationship between CSR and WCR. What the trial court said was:

In making this ruling, I want to make clear that in no way is my ruling intended to address any breach of piercing the corporate veil. I understand the difference of the different corporations that are at issue here, although I'm hesitant to even try to say the names because I'm sure I would get warm and cedar and springs and creek mixed up. I certainly do understand the distinction between those. However, the difference here is that while they are distinct legal entities, Mr. Dorius is a principal in both. There is a landlord/tenant relationship based upon his own testimony, and I do find that a landlord does have some duty to control the actions of its tenant, and I would say that at least in this case I would think that duty perhaps is slightly greater given the close interrelationship of the parties.

R. 1310:10-1311:2. Given that the trial court's actual ruling contradicts CSR's statement of Issue No. 2, the correct statement of Issue No. 2 should read: Did the district court err by finding that the question of CSR's duty to ensure that cattle on its property were properly fenced involved questions of fact for the jury to decide?

**STANDARD OF REVIEW:** Because CSR challenges the trial court's summary judgment and directed verdict rulings, two separate standards are applicable.

Appellate courts review a grant or denial of a motion for summary "in the light most favorable to the non-moving party." *Anderson Dev. Co. v. Tobias*, 2005 UT 36, ¶ 31 (quoting *Billings v. Union Bankers Ins. Co.*, 819 P.2d 803, 803 (Utah 1991)). When a trial court denies a motion for summary judgment, and a trial follows, appellate courts may only review a trial court's denial of summary judgment for correctness when that decision is based upon a purely legal basis. *Kerr v. Salt Lake City*, 2013 UT 75, ¶ ¶11, 29. There is no appellate review if the denial of a motion for summary judgment is based on the existence of an issue of material fact and followed by a trial. *See also Hone v. Advanced Shoring & Underpinning, Inc.*, 2012 UT App 327, ¶ 6.

With regard to the standard of review that applies to a denial of a directed verdict, Liley reiterates that

When an appellant challenges the denial of a motion for directed verdict based upon the sufficiency of the evidence, 'the applicable standard of review is highly deferential.' 'A defendant must overcome a substantial burden on appeal to show that the trial court erred in denying a motion for directed verdict.'

*State v. Hawkins*, 2016 UT App 9, ¶ 32 (first quoting *State v. Nielsen*, 2014 UT 10, ¶ 30; then quoting *Gonzalez v. State*, 2015 UT 10, ¶ 27).

**ISSUE NO. 3:** CSR argues that the jury's verdict was internally inconsistent. It does not appear that CSR preserved this issue for appeal because CSR failed to raise the issue at the trial court level. Utah's preservation rule reads:

In order to preserve an issue for appeal, the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue. This requirement puts the trial judge on notice of the asserted error and allows for correction at that time in the course of the proceeding. For a trial court to be afforded an opportunity to correct the error (1) the issue must be raised in a timely fashion, (2) the issue must be specifically raised, and (3) the challenging party must introduce supporting evidence or relevant legal authority.

*438 Main Street v. Easy Heat, Inc.*, 2004 UT 72, ¶ 51 (internal citations and quotations omitted)<sup>1</sup>. See also *M.B. v. J.B.*, 2007 UT App 286, ¶ 11 (issue not persevered where party failed to raise any objection regarding findings at the juvenile court). Put another way, "To preserve an issue for appeal, a litigant 'must enter an objection on the record that is both timely and specific.'" *Zavala v. Zavala*, 2016 UT App 6, ¶ 39 (quoting *State v. Rangel*, 866 P.2d 607, 611 (Utah Ct. App. 1993)).

After the jury delivered its verdict in the present case, CSR failed to make a motion for a judgment notwithstanding the verdict, and CSR failed to make any other post-verdict or post-trial motion or objection challenging the jury's verdict and allowing the trial court an opportunity to reconcile any discrepancies within the jury's verdict before entering

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<sup>1</sup> CSR cites *438 Main* for the proposition that this Court's review of CSR's Summary Judgment is de novo. *438 Main* actually states that, "We review the district court's legal conclusions for correctness, and will reverse its factual findings only if they are clearly erroneous." *Id.* at ¶ 49. The Utah Supreme Court has implied that "de novo" review differs from "correctness" review. See *State v. Pena*, 869 P.2d 932, 935-940 (Utah 1994).

judgment. *See generally* Case History, attached hereto as Addendum No. 1. Consequently, CSR's Issue No. 3 was not preserved for appeal.

**STANDARD OF REVIEW:** If, however, CSR had actually preserved its challenge to the jury's verdict, the standard of review for challenging the consistency of a jury verdict is very deferential towards upholding the jury verdict.

'Where the possibility of inconsistency in jury interrogatories or special verdicts exists, [we] will not presume inconsistency; rather, [we] will seek to reconcile the answers if possible.' Accordingly, a jury's verdict will be sustained, even in the face of possible inconsistency, if the judgment can 'be read harmoniously.' Given this standard of review, the question for this court is whether it is reasonable to construe the jury's verdict with regard to these claims in a manner that gives effect to all of the jury's responses on the special verdict form.

*Neff v. Neff*, 2011 UT 6, ¶ 76, (quoting *Bennion v. LeGrand Johnson Constr. Co.*, 701 P.2d 1078, 1083 (Utah 1985)). When, as here, an appellant is essentially challenging the factual basis for a jury's verdict, that appellant must marshal the trial evidence that could be viewed as supporting the jury verdict.

To demonstrate that the evidence is insufficient to support the jury verdict, the one challenging the verdict must marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the verdict.

*Riggs v. Asbestos Corp.*, 2013 UT App 86, ¶ 31 (quoting *Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 799 (Utah 1991)). CSR has made no attempt to marshal the evidence in support of the jury's findings. The Court should therefore presume that the jury's verdict is substantially supported by the evidence introduced at trial.



**CONSTITUTIONAL PROVISIONS, STATUTES,  
ORDINANCES, RULES AND REGULATIONS**

UTAH CODE ANN. § 41-6a-407(1)(a) is directly at issue in this appeal. The text of this rule is attached as Addendum 2.

**STATEMENT OF THE CASE**

**I. NATURE OF THE CASE**

This is an appeal from the trial court's denial of CSR's Summary Judgment Motion, denial of CSR's Directed Verdict Motion, and the jury's verdict against CSR. Copies of the trial court's minutes denying summary judgment and Judgment on Jury Verdict are attached as Addenda 3 and 4, respectively. R. 674-676; and 801-803.

**II. DISPOSITION BELOW**

On November 3, 2011, Liley filed his Complaint, and on November 8, 2011, Liley filed an Amended Complaint naming the Utah Department of Transportation ("UDOT"), Juab County, Sanpete County, CSR, and Dale Dorius ("Dorius") as Defendants. Liley's Complaints alleged negligence for allowing a black angus cow to roam onto Highway 29 near Levan, Utah. R. 9-10. Liley's car collided with the cow late at night, and the collision caused severe injuries to Liley and the vehicle Liley was driving. *Id.*

Both Sanpete County and Juab County were dismissed from the action, R. 13, 154-157, as was Dorius in his individual capacity. R. 192-194; 350-351. On September 9, 2014, the parties participated in a pretrial conference and scheduled a jury trial to take place on March 3-5, 2015.

While the parties were awaiting trial, CSR filed the Motion for Summary Judgment that is at issue in this appeal. R. 385-397. In that Motion, CSR argued that it did not own the cow that caused Liley's injuries and that CSR therefore did not owe any duty to Liley. R. 392. In response, Liley raised a number of issues of fact, such as who maintained CSR's fences, where the cow came from, and who controlled the cattle on CSR's land. R. 428-431. Liley produced evidence that Dorius was the principal of both WCR and CSR, and that CSR's fencing had not been maintained for at least two years. R. 431-432. Liley also produced evidence that WCR was not a year-round tenant and only occupied CSR's land for three months per year. R. 437. Liley also pointed out that CSR had failed to identify any evidence to support its contention that WCR leased the land from CSR. R. 428-429.

CSR filed a Reply that devoted itself primarily to trying to cure CSR's prior failure to provide support for its allegation that WCR leased the land from CSR. In its Reply, CSR could only point to a statement by Dorius that in 1972 CSR and WCR had orally agreed to a lease of the land. R. 487. CSR argued in its Reply that Dorius' self-serving and uncorroborated testimony that in 1972 CSR and WCR agreed that WCR "maintain" the fencing on CSR's property when it was in residence was sufficient to support summary judgment. R. 486-490. CSR's Reply failed to dispute Liley's stated facts. R. 492.

On March 3, 2015, which was the first day of trial, the trial court denied CSR's motion for summary judgment. R. 674. The Court then proceeded with a three-day jury trial. R. 801-803. At the conclusion of Liley's case-in-chief, UDOT moved for a directed verdict on claims against UDOT, which the trial court granted. R. 804-806. CSR moved for a directed verdict on the issue of whether Liley had produced evidence to support a

legal basis for recovery against CSR. R. 1302:9-1310:9. The Court denied CSR's Directed Verdict Motion and found that there was sufficient evidence for the matter to go to the jury. R. 1310:10-1311:12. At the conclusion of the evidentiary phase of trial, the trial court instructed the jury on the law. R. 1460:10-1478:10. The jury then found that CSR was partially at fault for the cow being on the highway, and that CSR's liability to Liley was in the amount of \$304,940. R. 787-790. On March 20, 2015, the trial court entered a judgment on the jury verdict. R. 801-803.

After trial, Liley sought his costs associated with his claims. R. 812-826. On June 11, 2015, CSR moved to continue a supplemental proceeding regarding execution of the judgment. R. 1587-1590. The trial court granted CSR's Motion on June 25, 2015. R. 1593-1595. On August 10, 2015, CSR moved to stay collection of the judgment pending this appeal. R. 1596-1604. CSR argued that no security was necessary because a judgment lien from the trial court's judgment already encumbered CSR's real property. R. 1603. On August 17, 2015, the Court granted CSR's Motion. *See Case History at 24.* CSR did not file any other motions after trial. *See id.*

### **III. STATEMENT OF FACTS AND MARSHALLING OF EVIDENCE.**

#### **A. THE COLLISION WITH THE BLACK ANGUS COW.**

On October 4, 2009, Liley was traveling northbound on Highway 28 near Levan, Utah at approximately 2:00 a.m. R. 426-427; 985:21-986:8; 988:7-16. Liley was obeying the speed limit. R. 985:21-986:7; 1239:2-14. Near mile marker 20, Liley came over a small rise in the road and saw a cow standing in the middle of his lane facing west. R. 426-7; 981:16-22. Liley swerved to avoid the cow, but struck the cow on the passenger side of

the truck that Liley was driving, killing the cow. *Id.* Liley immediately pulled over and called 911. R. 1225:22-1226:3. Liley was then able to investigate the cow that he struck, and found a blue tag on its ear that read “Dorius Family.” R. 982:20-24. Liley was also able to hear a number of unseen cows bellowing from the east side of Highway 28. R. 982:24-983:18. Liley then used his flashlight to inspect the east side fence and discovered several large holes in the fence. *See id.* Liley had some experience in fencing cattle as a result of working on his father’s ranches. *See* R. 987:19-988:6.

Later that day, Liley began experiencing severe pain in his wrist, shoulders, back, and neck. R. 991:3-16. Over the next five years, Liley continued to experience severe pain despite consulting several physicians and physical therapists and undergoing years of treatment and medications. R. 992-98. Due to Liley’s condition, he can no longer work as a chef or musician, or perform 90% of the tasks that Liley performed before the accident. R. 998-1001; R. 1005-1009. Liley has also become disabled due to his injuries and associated depression that resulted from the accident. R. 1001:20-1002:24. Liley continues to consult with physicians and undergo treatments for the injuries he sustained on October 9, 2009. R. 1002:25-1004:17.

In the spring of 2010, Liley returned to the scene of the crash with Jared Jensen, Frank Pippy, and others to further investigate the scene. R. 1010-1014. Liley asked Pippy to come because Pippy has expertise in cattle fences due to his 38 years as a professional cowboy herding cattle. *See id. and* R. 1157:8-1158:4. While at the scene, Liley took photographs of the carcass of the cow, the holes in the fence, and the surrounding area, and these photographs were published to the jury. R. 1010-1014. Liley inspected the fence on



the east side of Highway 28 and determined that it had not been repaired for many years, which Liley was able to determine from his experience working on a cattle ranch. R. 1027:23-1028:13. Pippy also confirmed that the fence had not been maintained or repaired for at least one year. R. 1185:18-1187:4. Liley eventually confirmed that CSR owned the land and fence in the photographs. *See* R. 1041:6-23.

**B. DENIAL OF CSR'S MOTION FOR SUMMARY JUDGMENT.**

On December 2, 2014, CSR moved for Summary Judgment. R. 385-397. CSR argued that it did not own the cow that caused Liley's injuries and that because CSR did not own the cow; CSR did not owe any duty to Liley. R. 392. In its Motion, CSR alleged that WCR leased the land from CSR and that WCR, was solely responsible for maintaining CSR's fences. R. 390 at ¶ 11. CSR, however, failed to cite any evidentiary support for its allegation. *See id.*

In response to CSR's Summary Judgment Motion, Liley pointed out that CSR had failed to support its contention that WCR leased the land from CSR, or that a lease relieved CSR from any duty to maintain its own fences. R. 428-429. Liley also asserted that issues of fact existed, and that the evidence showed that CSR, and its principal, Dorius were responsible for maintaining the fencing. R. 430-431. Liley argued that undisputed deposition testimony had established that CSR's fencing had not been maintained for at least two years. R. 431-432. Liley also asserted that CSR knew and ignored the fact that the fences were not being maintained. R. 432-433.

CSR filed a Reply that devoted considerable space to addressing its prior failure to provide support for its allegation that WCR leased the land from CSR, and that the

purported lease required WCR to “maintain” the fencing on CSR’s property during WCR’s term in residence. R. 486-490. CSR’s sole evidence consisted of self-serving testimony from Dorius that he had orally agreed with himself on behalf of his entities in 1972 to “lease” the land from his one entity to his other entity. R.487. CSR argued that it had no duty to maintain the fencing on its own property, and that CSR did not legally “own” the cow. R. 490-492.

On March 3, 2015, the first day of trial, the trial court and counsel for the parties met in Judge Brown’s chambers regarding CSR’s Summary Judgment Motion off the record, at which time the trial court made findings and denied CSR’s Motion. R. 674. The Court then proceeded with a three-day jury trial. R. 801-803.

C. **THE TRIAL COURT’S OPENING INSTRUCTIONS TO THE JURY.**

After the trial court impaneled the jury, the trial court repeatedly instructed the jury that trial court and not the lawyers would instruct the jury on the law to apply. In the first such instruction, the trial court stated,

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

R. 941:7-10. The trial court then reiterated this instruction by stating, “I will also instruct you on the law that you must apply. It’s your role to follow that law and to decide what the facts are.” R. 943:4-6. The Court then explained the lawyers’ role in the trial:

Neither the lawyers nor I actually decide the case. That is your role. You should decide the case based upon the evidence presented in court and the instructions that I give you. It is the lawyers’ role to present evidence, generally by calling and questioning witnesses and presenting exhibits. Each

lawyer will also try to persuade you to decide the case in favor of his or her client.

R. 943:10-18. The trial court then reiterated that it would instruct the jury on the law that the jury must apply.

Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. You must obey these instructions. You are not allowed to reach decisions that go against the law.

R. 944:8-12. Immediately thereafter, the trial court once again clarified the lawyers' role to the jury by stating:

The lawyers will then summarize and argue the case. They will share with you their views of the evidence, how it relates to the law, and how they think you should decide the case.

R. 944:12-16. The trial court then reaffirmed that the trial court would instruct the jury on what law the jury should follow:

Your verdict must be based on the evidence presented in court and on my instructions on the law, and I'll give you more instructions about that step a little bit later. From time to time throughout the trial, I will instruct you on the law.

R. 943:18-24 (emphasis supplied). Shortly thereafter, the trial court reaffirmed, for the fifth time, that it would tell the jury what the law is that they were to follow by stating: "The instructions that I give you are the law, and your oath requires you to follow my instructions even if you disagree with them." R. 945:5-7.

#### **D. OPENING STATEMENTS OF LILEY, UDOT, AND CSR.**

In Liley's opening statement, Liley outlined what happened and what the evidence would show. R. 955:11-957:1. Liley's counsel then went on to state that,

[I]n this case the rule is if you're in control of livestock, mean it's in your property, fencing it in, you have a duty to make sure, as best as possible -- you don't have to be perfect, you just have to use reasonableness, reasonable care. You have to use that reasonable care to make sure that your fence is in good enough shape that your cows don't get out. But what happened here. That black cow at 2:00 a.m. on October 4th of 2009 out in the middle of the road where it wasn't supposed to be, got out of a hole in the fence of the property next to it.

R. 957:8-20. Neither CSR nor UDOT objected to this statement. R. 957. Liley's counsel then went on to state that,

Now, I've introduced you to Pat Liley. You have two defendants here today. One is Utah Department of Transportation. The other is Cedar Springs Creek Ranch. The owner of the property is the ranch. The owner of the property is responsible to make sure that they take reasonable care in maintaining their fences. . .

R. 957:25-958:4. Neither CSR nor UDOT objected to this statement. R. 958. Liley's attorney then went on to state that UDOT's duty is "Nondelegable." R. 958:5-10. Neither CSR nor UDOT objected to this statement. R. 958. Later, when Liley's attorney was discussing UDOT's duty, UDOT's attorney objected as follows:

When I said UDOT has a nondelegable duty, that duty is if they own the fence, unless they have a written agreement with the owner of the property that they're going -- that the owner is going to maintain the fence, they have to do it. You're not going to hear any evidence from UDOT that they had an agreement with Cedar Springs to maintain the property.

**MR. FERRE**: Object, Your Honor. He's arguing the law, and it's a complete misstatement of the law, Your Honor.

**THE COURT**: I'm going to overrule the objection. You are entitled to address the law, Counsel, in your opening statement. You can address any inconsistencies you think exist.

R. 959:21-960:10 (emphasis supplied). UDOT's objection is the only objection that occurred during Liley's opening statement. R. 955-976. CSR's counsel never objected to



any portion of Liley's opening statement, much less any portion wherein Liley's counsel addressed the law concerning CSR's liability. R. 955-976. However, both UDOT's attorney and CSR's attorney argued the law in their opening statements. R. 967:24-968:13; 969:14-22; 972:6-10; 974:18-25.

**E. LILEY'S CASE-IN-CHIEF EVIDENCE.**

**i. Liley's Testimony.**

After opening statements, Liley testified in his case-in-chief as the first witness. R. 976. Liley testified that he and his friend, Doc Vigos, a former professor of quantitative mathematics at the University of Utah, left Salina, Utah on October 3, 2009 to avoid a storm that was approaching where they two men had been hunting elk. R. 978-979. Liley testified that he was not tired and was alert, and was driving at or below the speed limit, which is his usual practice. R. 989:25-990:1; 985:21-986:5. Liley then explained that while traveling on Highway 28, just past Yuba Reservoir, he came over a little rise in the road, and saw a cow in the middle of the road. R. 981:16-20. Liley also said, "When I seen the cow, it was facing from east to west, and it turned its head, and I seen the glare in the eyes, and I swerved, and I hit it on the passenger side." R. 981:19-22. Liley further testified that upon inspecting the dead cow, he noticed it had a blue tag that said "Dorius Family." R. 982:15-983:3. Liley then explained that he was able to determine that the cow came from the east side of Highway 28 because of the bellowing of other cows. R. 982:24-983:18; 1079:14-1080:15. Liley testified that he inspected the fence and found numerous gaping holes in the fence and that the fence was in disrepair. R. 983:19-984:18. Liley

testified that he had experience in ranch fences based on working on his father's ranches. *See* R. 987:19-988:6.

Liley testified that he returned to the scene of the accident in the spring to further inspect the area and take photographs. R. 1010:14-1012:15. The photographs Liley took are included as part of the record. R. 1605 at Exhibit 6. Liley testified that the photographs showed the holes in the fencing on the east side of Highway 28 and the general state of disrepair of that fencing. R. 1015-1027. Liley further testified that during his inspection of the fence, he saw ten or more places where the fence was in disrepair. R. 1027:15-22. Regarding the owner of the land and fencing on the east side of Highway 28, Liley testified that he had done an investigation of ownership maps, and discovered that CSR owned the land. R. 1030:17-1031:7; 1032:11-1033:2.

**ii. Frank Pippy's Testimony.**

Liley called Mr. Frank Pippy, a friend of Liley's that had been a professional cowboy for 38 years. R. 1157:6-18. Pippy testified that he had ridden and fixed countless miles of cattle fencing. R. 1157:19-24. Pippy testified that he rode along the cattle fences to check for repairs and holes so that the cattle do not escape. R. 1157:25-1126:4. According to Pippy, fixing cattle fences is "a constant job" and is also necessary for safety. R. 1158:5-23. Pippy testified that given his 38-year career he had good understanding of what to look for in a fence to determine whether it is in disrepair and what problems can result. R. 1158:24-1160:23; 1162:4-1163:18.

Pippy testified that Pippy went with Liley in approximately March of 2010 to inspect CSR's fence. R. 1167:7-1169:3. Pippy testified that he walked a total of

approximately two miles along the fence lines on the east and west side of Highway 28. R. 1169:5-8. Pippy testified that he could not see any signs that cattle had been grazing on the west side of Highway 28, but that there were ample signs that cattle had been on the east side of Highway 28. R. 1169:9-1172:10. Pippy was then shown the same photographs that were marked as Exhibit 6 at trial. R. 1172-1192. In the process of examining these photographs, Pippy testified that there was a major hole in the east side fence that a cow could easily pass through, which is depicted in the top photograph on page 1156. R. 1173:4-17. Pippy also testified that due to the lack of any hair on the fence, other than cow hair, that the hole had most likely been caused by cows leaning on the fence for quite some time. R. 1174:3-1176:7. Pippy testified that repairing and maintaining a cattle fence is a constant priority, and if cattle had been kept on the east side land, then the fence should have been checked multiple times. R. 1176:8-1177:22. Also, that the hole depicted on page 1156 of Exhibit 6 should be fixed immediately and definitely not left for the following year. R. 1177:23-1178:10. Pippy testified about the existence of holes and other deficiencies in the fence that were depicted on pages 1158-1167. R. 1179-1192. In all, Pippy testified that he had seen six to nine places on the fence that appeared to have been neglected for a long time. R. 1182:3-15. In fact, Pippy testified that the east side fence “just was very weak, way neglected,” and “it ain’t been maintained for years.” R. 1182:10-15. Pippy further testified:

Q So it's your opinion that the entire length of fence that you looked at on the east side hadn't been maintained in years?

A My opinion.

Q Certainly not something where a cowboy was riding it every day making repairs?

A Oh, no. If he had a man out there or someone, no problem. You wouldn't have none of this.

Q Because why not?

A Fence is maintained and done properly, right.

Q So if there had been routine maintenance on the fence on the east side of State Road 28 in the mile that you walked up and down, you wouldn't have seen these holes?

A No, sir.

R. 1182:16-1183:7.

**iii. Trooper Jared Jensen's Testimony.**

Liley called Utah Highway Patrol Trooper Jared Jensen. R. 1215-1222. Trooper Jensen testified that he responded to the collision and arrived to see Liley's one-ton truck with "heavy front-end damage," with pieces of the truck strewn across the Highway 28, *see* R. 1224:10-17, and that the truck was not drivable. R. 990:13-15; 1235:13-18. Trooper Jensen testified that he then conducted an investigation and confirmed that there was a large black cow, in the dark, and against the black pavement was struck and died. R. 1225:22-1226:3. Trooper Jensen also testified that his investigation confirmed that Liley was not speeding. R. 1239:2-14. Trooper Jensen further testified that he inspected the dead cow and discovered the blue tag on its ear that, according to Trooper Jensen's report, stated: "Dorius Family Farms, Fayette, Utah." R. 1224:18-1225:6. Trooper Jensen additionally testified that two days later when Trooper Jensen returned to the scene for follow-up investigation the dead cow was still where it had been, but the head of the cow,

including the Dorius Family's tag, had been removed. R. 1227:16-1228:9. Trooper Jensen further testified that the contact person or potential owner of the cow was listed as Dale Dorius. R. 1232:18-1233:20. Trooper Jensen also testified that he knows Dorius' name because "he owns cows in the area" and that it was his understanding that Dorius owned cows in that area. R. 1233:21-1234:3. Trooper Jensen also testified that in his experience he has seen cows kept on the east side of Highway 28. R. 1234:12-1235:9.

**iv. Testimony of Dale Dorius.**

Liley called Dorius to the stand. R. 1242. Dorius testified that he is the president and one of two shareholders, the other being Dorius' wife, of Cedar Springs Ranch, Inc. ("CSR"), and has been so since the late 1990s. R. 1242:20-1243:8. Dorius also is also one of six shareholders in Warm Creek Ranch, Inc. ("WCR"). R. 1267:4-10. Dorius admitted that CSR owns land on the east side of Highway 29 near Levan, Utah. R. 1243:19-1244:8. Dorius testified that in or about 1972, Dorius, on behalf of CSR, entered into an oral lease with Dorius, on behalf of WCR, that allowed WCR to graze cattle on CSR's land for approximately four months of every year. R. 1265:13-17; 1266:7-14; 1264:4-6. Dorius admitted that there is no evidence other than his own testimony about the terms of the purported lease. R. 1266:7-14. Dorius was further forced to admit that CSR judicially admitted in its responses to Liley's Interrogatories that Dorius is one of the individuals responsible for maintaining the cattle on CSR's land. R. 1245:6-15. Dorius also admitted that all of the photographs in Exhibit 6 were of the fence on the east side of Highway 28 and that the fence shown in those photographs was in disrepair. R. 1246-1251; 1254:6-14. Dorius also admitted that he was running angus cattle on CSR's land on October 4, 2009.

R. 1252:7-14. Dorius also testified that he had not produced any documents as to whether any of those cattle were lost in 2009. R. 1257:14-17. Dorius further testified that when no cattle are present on CSR's land, no repairs to the fence are made. R. 1261:2-6. Dorius then admitted that during the other eight months of the year, when no cattle are present, CSR did not maintain or inspect the fence. R. 1261:7-16.

**F. CSR'S DIRECTED VERDICT MOTION.**

At the conclusion of Liley's case-in-chief, CSR moved for a directed verdict on whether there was evidence of "a legal basis for recovery against [CSR]." R. 1302:11-13. CSR argued that Liley had not established that CSR owed Liley a duty. R. 1302:23-25. CSR argued that, "The owner of the cow is unknown." R. 1302:25-1303-2. CSR then argued that it had leased its land to WCR, and that it was WCR's duty to maintain the fence. R. 1304:10-1305:17. CSR then attempted to invoke *Stephenson v. Warren* to argue that CSR was not responsible for WCR's failure to keep the fence in good repair because a tenant is responsible for conditions the tenant created or that came into existence while the tenant was in possession. R. 1304:15-25

In response, Liley pointed out that there was evidence of a long-standing fence on the property and that CSR allowed cattle onto the property. R. 1306:15-22. CSR pointed out that there was testimony from Mr. Pippy that CSR's fence had not been maintained in years. R. 1308:1-12.

CSR then replied by arguing that CSR did not own, possess, or control any livestock, and that therefore CSR had no duty to feed or maintain the cattle. R. 1309:2-6. CSR argued that because WCR owned the cattle, it had control and possession over those cattle,



wherever those cattle happen to be. R. 1309:7-9. CSR then stated that because there had been testimony that it was WCR's duty to maintain the fences, the Court should accept that evidence. R. 1309:14-20. CSR argued that because Dorius testified that WCR had a duty to maintain the fences, CSR had no duty to maintain the fence or the cattle. R. 1309:17-23.

After considering the parties' oral arguments, the Court denied CSR's Directed Verdict Motion as follows:

THE COURT: Thank you. In making this ruling, I want to make clear that in no way is my ruling intended to address any breach of piercing the corporate veil. I understand the difference of the different corporations that are at issue here, although I'm hesitant to even try to say the names because I'm sure I would get warm and cedar and springs and creek mixed up. I certainly do understand the distinction between those.

However, the difference here is that while they are distinct legal entities, Mr. Dorius is a principal in both. There is a landlord/tenant relationship based upon his own testimony, and I do find that a landlord does have some duty to control the actions of its tenant, and I would say that at least in this case I would think that duty perhaps is slightly greater given the close interrelationship of the parties.

And so unlike the directed verdict for UDOT, I am going to find that there is sufficient competent evidence to go to the jury on the issue of negligence with regard to Cedar Springs Ranch. And I note in making this decision that there's already been an indication of an intent to allocate fault to Warm Springs which Cedar Springs still has available to it in this action. And so I'm going to deny the motion for the directed verdict, and we'll move forward on that basis.

R. 1310:10-1311:12.

G. THE JURY INSTRUCTIONS RELATED TO DUTY AND CONTROL.

After all of the evidence was presented, the trial court presented the jury with more instructions on the law, including an instruction on CSR's duty. CSR did not object to the following jury instruction originally submitted by UDOT:

Patrick Liley alleges that Cedar Springs Ranch was negligent in failing to maintain the fence located on Cedar Springs Ranch property in a reasonably safe condition. In determining whether Cedar Springs Ranch is negligent, you are instructed that Cedar Springs Ranch, as the landowner, has the ability to control Warm Creek Ranch's activity on the land. You are further instructed that Cedar Springs Ranch is required to use reasonable care in controlling Warm Creek Ranch when Cedar Springs knows or should know that this control is necessary to prevent harm to others.

If you find that Cedar Springs Ranch [and Warm Creek Ranch] was negligent in any of these respects, then you must determine whether that negligence was a cause of harm to Patrick Liley.

R. 584 (alteration in 763) (emphasis supplied); *see also* 1399:22-1400:9. UDOT first submitted the above instruction as Defendant's Instruction No. 8. R. 575; 1392:2-6. On March 4, 2015, the second day of trial, and before any motions for a directed verdict, CSR stipulated to Defendant's Instruction No. 8. R. 1399:22-1400:9; 1302-1311. After the trial court denied CSR's directed verdict motion, the parties examined the jury instructions that would be the final jury instructions, including Defendant's Instruction No. 8 (Final Instruction No. 6). R. 1399:13-1403:22. During the discussion of that particular jury instruction, CSR's counsel, Ms. Reyes, once again did not object to it. *See id.* The Court then gave the above-quoted instruction to the jury as Instruction No. 6. R. 1463:11-1464:1.

CSR also stipulated to Defendant's Instruction No. 30, which became Final Instruction No. 4. R. 584; 761; 1397:5-1399:6 1399:22-1400:9. The only change from the

original instruction was that it no longer identified UDOT. R. 1397:10-20. The Final Instruction No. 4 ultimately read:

Cedar Springs Ranch and Warm Creek Ranch are corporations and act or fail to act when their officers, employees, or agents act or fail to act within the scope of their duties or authority.

R. 761; 1397:16-20; 1462:7-11.

Final Instruction No. 7 originally was Defendant's Instruction No. 11 and CSR agreed to the instruction in its original form. R. 588; 1399:22-1400:9. When the trial court dismissed UDOT as a party, Liley and CSR discussed adapting Defendant's Instruction No. 11 to address Liley's allegations of negligence against CSR. R. 1404:7-1406:2. CSR objected that Liley's Amended Complaint did not allege the claims against CSR that UDOT stated in Defendant's Instruction No. 11, but CSR acknowledged that the claim had been argued in trial that very day. R. 1406:7-12. The trial court read the Amended Complaint and determined that the language of Liley's Amended Complaint was broad enough to support the instruction. R. 1407:11-1408:8. CSR then argued for certain alterations, R. 1408:9-13, and the trial court accepted CSR's proposed alterations regarding allegations by CSR against WCR. R. 1408:14-1409:6. The following day, the parties convened and further modified the instruction to include both of Liley's bases for his negligence claim against CSR. R. 1455:7-1456:25. Defendant's Instruction No. 11 thus became Final Instruction No. 7 and was read as follows to the jury:

Plaintiff alleges that Cedar Springs Ranch was negligent in the following respects:

Cedar Springs Ranch failed to exercise reasonable care in maintaining the fence to prevent cattle from coming onto the highway;

Cedar Springs Ranch violated a Utah safety law that requires a cattle owner to keep its cattle from straying or remaining unaccompanied in the highway. A violation of a safety law is evidence of negligence.

The safety law states, quote, A person who owns or is in possession or control of any livestock may not negligently permit any of the livestock to stray or remain unaccompanied on a highway if both sides of the highway are separated from adjoining property by a fence, wall, hedge, sidewalk, curb, lawn or building. In any civil action brought for damages caused with any domestic animal or livestock on a highway, there is no presumption that the collision was due to negligence on behalf of the owner or the person in possession of the domestic animal or livestock.

If you find that Cedar Springs Ranch was negligent, then you must determine whether that negligence was a cause of harm to Patrick Liley.

R. 764; 1464:2-1465:2.

#### **H. CLOSING ARGUMENTS OF LILEY AND CSR.**

Liley closed by asking the jury to find that CSR was responsible for the cow being in the road. R. 1478:18-1479:2. Liley's counsel directed the jury's attention to Instruction No. 7. R. 1479:18-1480:7. Liley's counsel then argued about the factual question of possession or control. R. 1480:8-14. Liley's attorney then reviewed the evidence regarding fault and damages. R. 1480-1493. Liley argued against allocating fault, but Liley also told the jury that if the jury believed WCR was at fault, they were to so indicate on the special verdict form. R. 1494:4-6.

CSR acknowledged in closing that there were two separate grounds for possibly finding CSR negligent: "Either that Cedar Springs Ranch failed to exercise reasonable care in maintaining the fence, [or] that they violated a Utah safety law." R. 1522:2-4. CSR's attorney then argued for a narrow interpretation of Utah's Safety Law. R. 1523:1-

7. CSR's attorney conceded that the jury could find negligence when a cow is on a highway and causes a collision, R. 1524:10-1525:2, and that CSR had the ability to control WCR's activity on the land. R. 1525:12-16.

Liley's Rebuttal then refocused the jury on Instruction No. 7 and quoted the language of the Safety Law. R. 1547:23-1548:13. Liley then argued for the application of that law to the facts of the case. R.1548:14-22; 1549:12-1550:8.

At no point during closing arguments did CSR object to Liley's closing. R. 1478-1559. The only interruption was during Liley's Rebuttal, where CSR's attorney had a clarification question about versions of documents that were being used. R. 1546:24-1547:11.

At the conclusion of the jury trial, the jury found that: (1) CSR was at fault; (2) CSR was 85% at fault for the harm to Liley; (3) Liley was 15% at fault; and that Liley's total damages amounted to \$304,940. R. 787-790. On March 20, 2015, the trial court entered a judgment on the jury verdict. R. 801-803.

### **SUMMARY OF ARGUMENTS**

I. Issues of material fact concerning scope of duty, possession, and control of the cattle, and negligence precluded summary judgment or a directed verdict in CSR's favor. Because the trial court denied summary judgment based on the presence of factual issues and held a jury trial, there is no appellate review of the trial court's summary judgment ruling. CSR invokes *Stephenson v. Warner*, as a basis for absolving a landlord of liability, but *Stephenson* only absolves a landlord from liability for damages that result from a condition created by the tenant. CSR failed to offer any evidence that the defective

fencing was caused by its tenant, and substantial evidence was presented to show that CSR caused the condition. CSR also relies solely on the self-serving testimony of its President, Dale Dorius, to establish the existence and terms of existence of a purported 44-year old oral lease with another company controlled by Mr. Dorius. The jury was free to conclude that this uncorroborated and self-serving testimony of Mr. Dorius was not credible and that there was no lease. The evidence at trial provided a substantial basis for the jury to find that CSR was at fault and liable for the injuries Liley suffered, and CSR cannot carry its burden to demonstrate otherwise.

II. Although CSR spends much of its brief attacking the opening statements and closing arguments of Liley's counsel, CSR never objected at the trial court level regarding the opening statements and closing arguments of Liley's counsel. Thus, CSR failed to preserve the issue for appeal.

III. The jury received ample and repeated instructions that they were only to heed and follow the trial court's instructions regarding what law to apply. Utah law presumes that the jury followed those instructions, unless evidence is shown to the contrary. Here, CSR has failed to present any evidence to the contrary, and thus the presumption that the jury followed the trial court's instructions is unrebutted.

IV. By stipulating to jury instructions that stated that CSR had the duty and ability to control WCR, and then emphasizing that point to the jury, CSR invited any error that may have existed in that instruction, and may not now challenge the results of that instruction on appeal.



V. Liley's negligence claim was grounded on two separate duties. First, the Safety Law imposed a duty upon owners, possessors, and controllers of livestock to keep them off highways. Second, CSR had a common law duty to control its tenant and to protect the general public. CSR acknowledged these alternative duties in its closing arguments. The jury could therefore find a breach of either or both duties to arrive at a finding that CSR was negligent.

VI. CSR accuses the trial court of ruling that CSR owed a greater duty because of Dorius' involvement in both CSR and WCR. But the trial court merely opined that a greater duty might exist, and it allowed the jury to determine the scope of CSR's duty.

VII. CSR never raised any issue regarding the inconsistency of the jury's verdict at the trial court level. CSR is therefore barred from challenging the jury's verdict on appeal.

### ANALYSIS

I. THE QUESTION OF WHETHER CSR HAD A DUTY TO KEEP ITS FENCES IN GOOD REPAIR WAS PROPERLY SUBMITTED TO THE JURY.

A. THE TRIAL COURT PROPERLY DENIED CSR'S MOTION FOR SUMMARY JUDGMENT.

CSR contends that it was entitled to summary judgment and later a directed verdict on the ground that no fact finder could reasonably conclude that CSR owed a duty to Liley to keep the fences in functional condition. Because of the existence of factual issues and the jury's subsequent finding in favor of Liley at trial, the trial court's denial of CSR's motion for summary judgment should not even be reviewed on appeal. *See Kerr v. Salt*

*Lake City*, 2013 UT 75, ¶ 29 and *Hone v. Advanced Shoring & Underpinning, Inc.*, 2012 UT App 327, ¶ 6. Even if this Court were to disregard that rule and consider the merits of CSR's summary judgment argument, CSR cannot escape the legal maxim that questions about possession and control are inherently questions of fact. *Rahofy v. Steadman*, 2012 UT 70, ¶ 21 (possession or control of medical records is ultimately a question of fact); *State v. Bowen*, 143 P. 134, 135 (Utah 1914) (what constitutes recent possession of a cow is a question of fact). So too is the question of negligence.

'Ordinarily, the question of negligence is a question of fact for the jury. Thus, summary judgment is appropriate in negligence cases only in the most clear instances.'

*Baczuk v. Salt Lake Regional Med. Ctr.*, 2000 UT App 225, ¶ 5 (quoting *Hunt v. Hurst*, 785 P.2d 414, 415 (Utah 1990)). These questions of fact precluded summary judgment or a directed verdict in CSR's favor.

CSR tried to evade these fact questions in its trial court motions, and CSR tries to do so again on appeal, by arguing that *Stephenson v. Warner*, 581 P.2d 567 (Utah 1978), immunizes a landlord from liability for any event that occurs on leased property. But *Stephenson* does not categorically relieve a landlord from any and all duties to maintain its property simply because a tenancy exists. See *id.* at 568-569. *Stephenson* merely holds that it is the tenant, rather than the landlord, who is liable for those conditions that the tenant creates or permits to come into being during its tenancy. According to *Stephenson*,

[I]t is the tenant who is liable for any dangerous condition on the premises which he creates or permits to come into existence after he has taken possession.

*Id.* at 568-569 (emphasis supplied).

The evidence before the trial court at summary judgment included CSR's judicial admission in its responses to Liley's Interrogatories that its president and half-owner, Dale Dorius, was responsible for maintaining the cattle. R. 437. The evidence also established that CSR owned the land and allowed cattle to graze on that land. R. 429. Indeed, cattle were grazing that land at the time of the accident, and the cow that caused the accident had been "heading west from Cedar Springs Ranch and was separated from its herd..." and "there were no cattle on the west side of the road." R. 429; 492. Moreover, the fence on CSR's Property, which was near the accident site, had not been maintained or repaired in any way for at least two years. R. 429; 492. The evidence further established that CSR owned the property, had fencing on its property year-round, and did not maintain or inspect the fences for approximately nine months out of the year. R. 437; 443-444. Thus, there was ample evidence in the summary judgment record to conclude that CSR possessed or controlled the cattle, or was responsible for maintaining the cattle and the fencing, to a sufficient degree to impose liability upon CSR for its role in allowing the black angus cow to enter the highway. At the very least, this evidence presented a question of fact regarding possession and control of the cattle and the fences sufficient to overcome summary judgment.

The self-serving testimony of Dorius about a purported 40-year-old oral lease with a fence maintenance provision was unsupported by any evidence other than Dorius' own testimony, and CSR did not identify that testimony until its Reply brief was filed. For that reason alone the trial court was in a position to deny summary judgment.

‘It is the responsibility of the moving party to raise in its . . . motion *all* of the issues on which it believes it is entitled to [prevail]. *Allowing the moving party to raise new issues in its rebuttal materials is improper because the nonmoving party has no opportunity to respond.* It is for this reason that, in the analogous area of appellate review, the rule is well settled that the court will not consider issues raised for the first time in a reply brief.’

*State v. Phathamavong*, 860 P.2d 1001, 1003-1004 (Utah Ct. App. 1993) (quoting *White v. Kent Medical Ctr. Inc.*, 810 P.2d 4, 8 (Wash. Ct. App. 1991)) (emphasis and alterations in original).

**B. THE TRIAL COURT PROPERLY DENIED CSR’S MOTION FOR A DIRECTED VERDICT.**

Turning to the evidence during Liley’s case-in-chief at trial, Liley introduced substantial evidence to support a jury finding that CSR was at fault if for no other reason than for failing to maintain its own fences for the eight months that WCR was not in residence.

As a threshold matter, it was CSR’s duty in this appeal to marshal that evidence for this Court. *See* UTAH R. APP. P. 24(a)(9).

When a party challenges a trial court’s denial of a motion for directed verdict or judgment notwithstanding the verdict on the basis of insufficiency of the evidence, we follow one standard of review: We reverse only if, viewing the evidence in the light most favorable to the prevailing party, we conclude that the evidence is insufficient to support the verdict. Accordingly, this standard obligates the appealing party to marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the verdict. In other words, demonstrating insufficiency of the evidence requires an appealing party to show that all the evidence in favor of the verdict cannot support the verdict.

*Brewer v. Denver & Rio Grande W. R.R.*, 2001 UT 77, ¶ 33 (internal citations and quotations omitted). A party who fails to marshal evidence when required to do so “‘will

almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal.””  
*Schreib v. Whitmer*, 2016 UT App 61, ¶ 28 n.9 (quoting *State v. Nielsen*, 2014 UT 10, ¶ 42).

Because CSR failed to assemble any of the probative evidence that Liley introduced in his case-in-chief, Liley has been forced to conduct that marshalling exercise for CSR. SCR should be required to reimburse Liley for the legal fees that Liley incurred to marshal the evidence that is set forth in this brief. See *Fay v. Rodgers*, 2010 UT App LEXIS 28, \*9-\*10 and UTAH R. APP. P. 33.

The evidence presented at trial established that the cow that caused the accident came from CSR’s Property. Dale Dorius, CSR’s president and 50% owner, testified that CSR owns the land on the east side of Highway 28 near Levan, Utah. R. 1243:19-1244:8. Liley confirmed this fact as well. R. 1030:17-1031:7; 1032:11-1033:2. Dorius admitted that CSR allows cattle to graze on its land from July through October each year, and has done so since 1972. R. 1265:13-17; 1266:7-14; 1264:4-6. Dorius also specifically admitted that he was running cattle on CSR’s land on October 4, 2009, i.e., the date of the accident. R. 1252:7-14. Mr. Liley testified that on the night of the accident, he heard cows bellowing on the east side of Highway 28. R. 982:24-983:18; 1079:14-1080:15. Liley also testified that the cow was headed from east to west when he struck it. R. 981:19-22. Trooper Jensen confirmed that the cow that caused Liley’s injuries had a blue ear tag that stated that the cow belonged to Dorius Family Farms. R. 1224:18-1225:6. Trooper Jensen also confirmed that that Dorius was the contact person for the cow. R. 1232:18-1234:3. Thus, the jury could reasonably find that cow was from CSR’s Property.

The evidence presented at trial also established that CSR failed to maintain the fences on its Property. CSR's President, Dorius, admitted that he is one of the parties responsible for maintaining the cattle. R. 1245:6-15. Dorius also admitted under oath that the pictures admitted as Exhibit 6 at trial showed the fence on the east side of Highway 28, and that the fence appeared to be in disrepair. R. 1246-1251; 1252:7-6-14. Dorius also admitted that for the nine months when WCR is not on the land, the fences are not inspected or maintained by CSR. R. 1261:2-16. Liley testified that on the night of the accident, Liley inspected the fence and noticed that the fence was heavily rusted, in a state a disrepair, and that several gaping holes existed in the fence. R. 983:19-984:18. Therefore, the jury could reasonably conclude that CSR had failed to maintain the fence.

The evidence also demonstrated that the fence had been in a state of extreme disrepair for years. Mr. Liley testified that the he saw numerous holes in the fence and that the fence was in a general state of disrepair. R. 1015-1027. Liley also testified that many metal portions of the fence were rusted and did not appear to have been repaired in years. R. 1027:23-1028:16. Mr. Pippy, who viewed the fence first-hand, testified that there was a major hole in the east side fence that a cow could easily crawl through, which was depicted on page 1156 of Exhibit 6. R. 1173:4-17. Mr. Pippy also opined that this hole should have been fixed immediately and not left for the following year. R. 1177:23-1178:10. Pippy then went on to testify of seeing numerous other holes and deficiencies that were accurately depicted on pages 1158-1167 of Exhibit 6. R. 1179-1182. Pippy also repeatedly testified that nothing had been done to repair the fence in years. R. 1182:3-1183:7. Accordingly, there was ample evidence that: (1) the cow came from CSR's



Property; (2) CSR failed to maintain its fence; (3) CSR had not maintained its fence for years; and (4) CSR's failure to maintain its fence predated WCR's current tenancy.

CSR's principal, Dale Dorius, attempted to deflect its duty to maintain the fences by testifying that WCR had orally agreed to maintain the fences 44 years earlier, but the only evidence of that purported lease was Dorius' self-serving testimony, which the jury was free to believe or disbelieve. *See Van Der Heyde v. First Colony Life Ins. Co.*, 845 P.2d 275, 280 (Utah Ct. App. 1993) ("The fact finder may or may not find such self-serving testimony credible."). Indeed, Dorius even admitted under oath that there was no tangible evidence of a lease.

Q Mr. Dorius, you've talked about this lease to Warm Creek. There's no written lease for that, is there?

A It's been an oral lease.

Q So we don't have any evidence that shows what the terms of that lease or what is required by your agreement with Warm Creek, do we, that we can look at?

A No, you don't have a written agreement.

R. 1266:7-15. Given the lack of any corroborating evidence whatsoever, the jury was well within its province to disbelieve Dorius' self-serving statements about the existence of any lease or, at a minimum, a fence maintenance provision in the lease. In fact, given that the jury expressly found that CSR was at fault, and that WCR was not at fault, it appears that the jury did not find Dorius' self-serving description of a fence maintenance agreement to be credible. R. 788. According to *Neff v. Neff*, the Court must accept this explanation for the jury's verdict. *See* 2011 UT 6, ¶ 16.

At the very least, the evidence allowed the jury to decide whether the holes in the fence were created during WCR's brief current tenancy or whether the holes existed when CSR controlled the fences a few months earlier. This factual question alone was sufficient to require the trial court to deny CSR's Motion for a Directed Verdict.

**II. CSR CANNOT ATTACK THE OPENING AND CLOSING STATEMENTS OF LILEY'S COUNSEL ON APPEAL WHEN CSR FAILED TO OBJECT TO LILEY'S OPENING OR CLOSING STATEMENTS AT TRIAL.**

CSR devotes a great deal of its Brief to arguing that the trial court erred by allowing Liley's counsel to argue about the application of the facts to Utah's Safety Law. But CSR never objected to Liley's opening or closing statement at trial.

In order to preserve an issue for appeal, the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue. This requirement puts the trial judge on notice of the asserted error and allows for correction at that time in the course of the proceeding. For a trial court to be afforded an opportunity to correct the error (1) the issue must be raised in a timely fashion, (2) the issue must be specifically raised, and (3) the challenging party must introduce supporting evidence or relevant legal authority.

*438 Main Street v. Easy Heat, Inc.*, 2004 UT 72, ¶ 51 (internal citations and quotations omitted). As this Court has stated that, "To preserve an issue for appeal, a litigant 'must enter an objection on the record that is both timely and specific.'" *Zavala v. Zavala*, 2016 UT App 6, ¶ 39 (quoting *State v. Rangel*, 866 P.2d 607, 611 (Utah Ct. App. 1993)). The objection mentioned in CSR's brief is that of Mr. Ferre, UDOT's attorney. Appellant's Brief at 8; R. 959:21-960:10. CSR failed to raise any objection. R. 955-976. CSR similarly failed to file any motion after trial objecting to Liley's statements. CSR cannot sit on its hands during trial and then raise an objection for the time on appeal.

**III. THERE IS NOTHING IN THE RECORD TO SUGGEST THAT THE JURY FAILED TO HEED AND FOLLOW THE JURY INSTRUCTIONS ISSUED BY THE TRIAL COURT.**

CSR argues that jury was improperly influenced by the arguments of Liley's attorney and that this caused the jury to disregard the jury instructions on the applicable law. In Utah, "We presume that a jury will follow the instructions given it." *State v. Menzies*, 889 P.2d 939, 401 (Utah 1994). See also *Hahnel v. Duchesne Land, LC*, 2013 UT App 150, ¶ 14 (same). This Court has repeatedly emphasized that,

'In the absence of the appearance of something persuasive to the contrary, we assume that jurors were conscientious in performing...their duty, and that they followed the instructions of the court.'

*State v. Toki*, 2011 UT App 293, ¶ 34 (quoting *State v. Burk*, 8239 P.2d 880, 883 (Utah Ct. App. 1992)).

Here, the trial court repeatedly instructed the jury that it must only listen to the trial court as to what law to apply. R. 941:7-10; 943:4-6; 943:18-24; 944:8-12; 945:5-7. Indeed, the trial court not only instructed the jury that the trial court would instruct them as to the law, but explained that the attorneys would be trying to persuade them, and that the attorneys would give their view of how the facts related to the law. This is precisely what Liley's counsel did in his opening and closing arguments. R. 943:10-18; 944:12-16. It is also what UDOT's attorney and CSR's attorney did in their opening statements as well. R. 967:24-968:13; 969:14-22; 972:6-10; 974:18-25. CSR then again argued what the Safety Law meant in its closing arguments. R. 1523:1-7. CSR has failed to point to any real evidence that the jury disregarded the trial court's instructions. The fact that the jury did not agree with CSR's counsel does not mean that the jury's decision should be disregarded.

Because of these facts, CSR has failed to overcome the presumption that the jury followed the trial court's instructions.

IV. **CSR'S STIPULATION TO JURY INSTRUCTIONS 6 AND 7 CONCEDED THAT CSR HAD A DUTY AND THE ABILITY TO CONTROL WCR.**

CSR argues that it did not have a duty to Liley as the landowner to maintain the fences. However, CSR's stipulation and agreement to Jury Instruction Nos. 6 and 7 refutes CSR's argument. In Utah, the invited error doctrine holds that:

Under the doctrine of invited error, however, Utah courts 'have declined to engage in even plain error review when counsel, either by statement or act, affirmatively represented to the trial court that he or she had no objection to the proceeding.'

*State v. Cheek*, 2015 UT App 243, ¶ 62 (quoting *State v. Winfield*, 2006 UT 4, ¶ 14). CSR invited any error by stipulating to Instructions No. 6 and 7.

Instruction No. 6 established that CSR had a duty to use reasonable care in controlling WCR when it knew or should have known that the control was necessary to prevent harm to others. In this regard, Instruction No. 6 specifically states:

You are further instructed that **Cedar Springs Ranch is required to use reasonable care in controlling Warm Creek Ranch** when Cedar Springs knows or should know that this control is necessary to prevent harm to others.

R. 763 (emphasis supplied). In discussions regarding this instruction, CSR's counsel acknowledged that Defendant's Instruction No. 8, which became Final Instruction No. 6, "talks about having the ability to control Warm Creek Ranch." R. 1400:16-17. By stipulating to this jury instruction, CSR allowed the jury to be instructed that it is the law that CSR had a duty to act to prevent harm to others.

Instruction No. 6 also states that CSR had the ability to control WCR. The instruction stated,

In determining whether Cedar Springs Ranch is negligent, you are instructed that Cedar Springs Ranch, as the landowner, has the ability to control Warm Creek Ranch's activity on the land.

R. 763 (emphasis supplied). In CSR's closing statements, CSR's own attorney acknowledged and agreed that CSR, as the landowner, had the ability to control WCR's activity on the land. R. 1525:12-16. Thus, CSR's attorney not only stipulated to a jury instruction that stated that CSR had a duty, but also reminded the jury of this instruction during CSR's closing argument. CSR likewise allowed Instruction No. 7, which stated the two alternative duties at issue. R. 764; 1404:10-1409:6. Accordingly, CSR has no one to blame but itself that the jury followed Instruction Nos. 6 and 7.

**V. CSR'S LIABILITY IS NOT LIMITED TO A FINDING THAT CSR VIOLATED UTAH'S SAFETY LAW.**

CSR argues that it had no duty under the Safety Law, and for that reason, the jury's verdict is irreconcilably inconsistent. CSR's argument, however, ignores the fact that there were two separate grounds for finding CSR negligent. In closing, CSR's counsel advised the jury that it could find "[e]ither that Cedar Springs Ranch failed to exercise reasonable care in maintaining the fence, [or] that they violated a Utah safety law." R. 1522:2-4. As a result, the jury could find negligence under the Safety Law or CSR's duty of "reasonable care in maintaining the fence to prevent cattle from coming onto the highway." R. 764.

The existence of CSR's independent duty to control its tenant can explain the trial court's denial of CSR's Directed Verdict Motion. The trial court did not state that CSR had a duty under the Safety Law, as CSR contends. Instead, the trial court stated,

I do find that a landlord does have some duty to control the actions of its tenant, and I would say that at least in this case I would think that duty perhaps is slightly greater given the close interrelationship of the parties.

R. 1310:23-1311:2 (emphasis supplied). This language shows that the trial court merely acknowledged that there was 'some duty,' whether from common law or from the Safety Law, and that the evidence presented in Liley's case-in-chief could lead a jury to find that CSR breached at least one of those duties. Thus, even if CSR did not have a duty under the Safety Law, the trial court's denial of CSR's Directed Verdict Motion, and the jury's verdict, are firmly grounded on CSR's alternative duty to control its tenant, as stated in Jury Instruction No. 6.

**VI. THE TRIAL COURT DID NOT FIND THAT CSR WAS UNDER A GREATER DUTY THAN ANY OTHER LANDOWNER.**

CSR accuses the trial court of ruling that CSR "owed a greater duty" because both CSR and WCR were controlled by Dorius. Appellant's Brief at 1 and 10-11. The trial court never made any such ruling. The only mention of "a greater duty" by the trial court is the statement that "I would think that duty perhaps is slightly greater given the close interrelationship of the parties. R. 1310:23-1311:2 (emphasis supplied). There is no mention of any purported heightened duty in any of the jury instructions. Instead, the trial court's comment is directly in line with Jury Instruction No. 6, to which CSR had previously stipulated. R. 763; 1399:22-1400:9; 1302-1311.



**VII. CSR FAILED TO PRESERVE ANY ISSUE AS TO THE CONSISTENCY OF THE JURY'S VERDICT.**

CSR failed to preserve any issues with regard to the integrity of the jury's verdict. In Utah, a party must make a timely and specific objection to the trial court's findings prior to challenging those findings on appeal. *See 438 Main Street v. Easy Heat, Inc.*, 2004 UT 72, ¶ 51; *T.H. v. State*, 2004 UT App 483, ¶ 9; *M.B. v. J.B.*, 2007 UT App 286, ¶ 11; *Zavala v. Zavala*, 2016 UT App 6, ¶ 39 (quoting *State v. Rangel*, 866 P.2d 607, 611 (Utah Ct. App. 1993)). CSR never raised any objection or filed any motion with the trial court concerning the consistency of the jury's verdict, or the trial court's adoption of that verdict. Because of this fact, CSR has no right to appeal this issue. Yet even if CSR had preserved the issue, CSR has failed to carry its heavy burden of demonstrating that there is no possible way to reconcile the jury's findings with one another. Indeed, the jury's findings fit perfectly into the logical chain of questions set forth in the jury verdict form. As a result, there is no basis to disturb the jury's verdict in this case.

**CONCLUSION**

CSR attempts to escape the jury verdict against it by mischaracterizing the trial court's comments as dispositive rulings that the trial court never actually made, by attacking opening and closing statements that were never objected to at trial, and by suggesting that the jury verdict is inconsistent without identifying any actual inconsistency between any two specific findings. The truth of the matter is that the trial court's actual rulings correctly recognized that issues of material fact precluded summary judgment, and that Liley had presented sufficient evidence on those factual issues to require a jury trial.

Contrary to CSR's argument, *Stephenson* does not shield CSR from liability because the evidence consistently showed that the disrepair of the fence predated WCR's current tenancy on CSR's Property and CSR is the party that allowed the condition to exist. CSR argues that it has no liability under Utah's Safety Law, but Jury Instructions 6 and 7, to which CSR stipulated, provided an alternative common law duty that CSR also breached. Given Utah's established policy of only disturbing jury verdicts in the most exceptional of circumstances, and CSR's failure to even preserve its issues for appeal, the Court should uphold the jury's verdict. Because CSR failed to marshal evidence when it was obligated to do so, CSR should be required to reimburse Liley for the cost of marshalling that evidence. For all of the foregoing reasons, the Court should: (a) affirm the trial court's denial of CSR's Summary Judgment Motion; (b) affirm the trial court's denial of CSR's Motion for Directed Verdict; (c) affirm the jury's verdict; and (d) order CSR to reimburse Liley for any legal fees incurred by Liley to marshal evidence for this Court.

#### **REQUEST FOR ORAL ARGUMENT**

Liley respectfully requests oral argument on this appeal.

DATED this 6<sup>th</sup> day of May, 2016.

**WRONA GORDON & DUBOIS, P.C.**

/s/ Joseph E. Wrona  
Joseph E. Wrona  
Jared C. Bowman  
*Attorneys for Appellee*

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

1. This brief complies with the type-volume limitation of UTAH R. APP. P. 24(f)(1) because it contains 12,624 words, excluding the parts of the brief exempted by UTAH R. APP. P. 24(f)(1)(B).

2. This brief complies with the typeface requirements of UTAH R. APP. P. 27(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman, 13 point.

DATED this 6<sup>th</sup> day of May, 2016.

/s/ Jared C. Bowman

Jared C. Bowman

**CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2016, two copies of the foregoing **BRIEF OF APPELLEE PATRICK LILEY** were mailed, postage prepaid to the following:

Brent D. Wride  
RAY QUINNEY & NEBEKER, P.C.  
36 South State Street, Suite 1400  
Salt Lake City, UT 84111  
*Attorneys for Appellant*

/s/ Brian Joyce

# Addendum 1

4TH DISTRICT COURT - JUAB  
JUAB COUNTY, STATE OF UTAH

APPEALED: CASE #20150267

PATRICK LILEY vs. UTAH DEPARTMENT OF TRANSPORTAT  
CASE NUMBER 120600012 Personal Injury

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CURRENT ASSIGNED JUDGE  
JENNIFER A BROWN

PARTIES

Plaintiff - PATRICK LILEY  
Represented by: S BROOK MILLARD  
Defendant - UTAH DEPARTMENT OF TRANSPORTAT  
Represented by: JOEL A FERRE  
Defendant - SANPETE COUNTY  
Defendant - CEDAR SPRINGS RANCH INC  
Represented by: BRENT D WRIDE  
Represented by: JENNIFER D REYES  
Defendant - DALE DORIUS  
Represented by: RUTH A SHAPIRO  
Represented by: TANNER A STRICKLAND LENART  
Other Party - JUAB COUNTY  
Represented by: SUSAN BLACK DUNN  
Represented by: KATHLEEN M LIUZZI

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	236.49
	Amount Paid:	236.49
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: APPEAL

	Amount Due:	225.00
	Amount Paid:	225.00
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: CERTIFIED COPIES

	Amount Due:	3.00
	Amount Paid:	3.00
	Amount Credit:	0.00
	Balance:	0.00

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Page 1

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REVENUE DETAIL - TYPE: CERTIFICATION

Amount Due:	8.00
Amount Paid:	8.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: POSTAGE-COPIES

Amount Due:	0.49
Amount Paid:	0.49
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

PROCEEDINGS

11-03-11 Filed: COMPLAINT	TRANSFERED
11-03-11 Filed: Complaint 10K-MORE	TRANSFERED
11-03-11 Filed: Demand Civil Jury	TRANSFERED
11-03-11 Fee Account created	TRANSFERED
11-03-11 Fee Account created	TRANSFERED
11-03-11 Fee Payment	TRANSFERED
11-08-11 Filed: First Amended Complaint	TRANSFERED
03-01-12 Filed: Notice of Dismissal of Defendant	TRANSFERED
03-05-12 Dismissed party - SANPETE COUNTY	TRANSFERED
03-12-12 Filed: ANSWER UDOT'S ANSWER TO FIRST AME	TRANSFERED
03-12-12 Filed: NOTICE OF UDOT'S JOINDER IN JUAB	TRANSFERED
03-12-12 Filed: Juab County's Answer to First Ame	TRANSFERED
03-12-12 Filed: Juab County's Motion to Change Ve	TRANSFERED
03-12-12 Filed: Memorandum in Support of Juab Cou	TRANSFERED
03-15-12 Filed: Juab County's Answer to Utah Depa	TRANSFERED
03-21-12 Filed: ANSWER DEFENDANT DORIUS' ANSWER T	TRANSFERED
03-21-12 Filed: RETURN OF ELECTRONIC NOTIFICATION	TRANSFERED
04-02-12 Filed: Request to Submit for Decision (J	TRANSFERED
04-02-12 Filed: Defendant Cedar Springs Ranch Ans	TRANSFERED
04-18-12 Filed: Order For Change of Venue Judge	TRANSFERED
04-30-12 Judge JAMES BRADY assigned.	
04-30-12 Note: Case transferred from Salt Lake City District. Case # 110918850	
04-30-12 Filed: Complaint	
05-03-12 Filed: Notice of Withdrawal of Counsel	

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Page 2



05-03-12 Filed: Certificate of Service  
05-07-12 Filed: Notice to Appear or Appoint Counsel  
05-08-12 Filed: NOTICE TO APPEAR PERSONALLY OR APPOINT LEGAL COUNSEL  
05-08-12 Filed: NOTICE TO APPEAR OR APPOINT COUNSEL  
05-25-12 Filed: Notice of Entry of Appearance  
06-21-12 Filed: Motion for Rule 16 (b) Scheduling Conference  
Filed by: UTAH DEPARTMENT OF TRANSPORTAT,  
06-26-12 Notice - NOTICE for Case 120600012 ID 14596276

SCHEDULING CONFERENCE is scheduled.

Date: 07/03/2012

Time: 01:04 p.m.

Location: 2ND FLOOR, ROOM #1  
160 NORTH MAIN

NEPHI, UT 84648

Before Judge: JAMES BRADY

06-26-12 SCHEDULING CONFERENCE scheduled on July 03, 2012 at 01:04 PM in  
Juab County Court with Judge BRADY.

06-26-12 Filed: Notice of Scheduling Conference

06-28-12 TELEPHONIC SCHEDULING CONF. scheduled on July 03, 2012 at 01:04  
PM in Juab County Court with Judge BRADY.

06-28-12 SCHEDULING CONFERENCE Modified.

Reason: Correct calendar

06-28-12 Filed: NOTE: THIS IS A TELEPHONIC SCHEDULING CONFERENCE. WRONA  
LAW FIRM WILL BE IN CONTACT WITH PARTIES AS TO HOW CONFERENCE  
WILL BE INITIATED.

06-29-12 TELEPHONIC SCHEDULING CONF. scheduled on July 03, 2012 at 01:00  
PM in Juab County Court with Judge BRADY.

07-03-12 Minute Entry - Minutes for TELEPHONIC SCHEDULING CONF.

Judge: JAMES BRADY

Clerk: taunyag

PRESENT

Plaintiff's Attorney(s): S BROOK MILLARD

Defendant's Attorney(s): JOEL A FERRE

KATHLEEN M LIUZZI

Other Parties: RUTH A SHAPIRO

Audio

Tape Count: 1:08:00

HEARING

Attorney Jennifer D. Reyes is excused from appearing today. Ms. Reyes is attending another court hearing and indicated she stipulates to the requests being made today.

Attorney Millard advises the Court that he is new counsel for the Plaintiff and that he and defense counsel met regarding this matter on Thursday, June 28, 2012. The parties have stipulated to URCP 26.

1 Disclosure and Discovery Requirements being in effect beginning June 28, 2012.

Court accepts the stipulation as discussed.

07-16-12 Filed: Certificate of Service  
07-31-12 Filed: NOTICE OF INTENT TO SERVE SUBPOENAS  
08-08-12 Filed: Certificate of Service of Defendant Dale Dorius's  
Initial Disclosures  
08-08-12 Filed: CERTIFICATE OF MAILING/SERVICE : UTAH DEPARTMENT OF  
TRANSPORTATION'S INITIAL DISCLOSURES  
08-08-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
08-13-12 Filed: Certificate of Service of Juab County's Initial  
Disclosures  
08-17-12 Filed: Initial Disclosures of Defendant Cedar Springs Ranch,  
Inc  
08-17-12 Filed: Certificate of Service for Initial Disclosures of  
Defendant, Cedar Springs Ranch, Inc  
08-23-12 Filed: CERTIFICATE OF MAILING/SERVICE : INTERROGATORIES 1-18  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS 1-14 TO PLAINTIFF  
08-23-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
08-31-12 Filed: Certificate of Service of Defendant Dale Dorius's First  
Set of Interrogatories and Request for Production of Documents  
to Co-Defendant Cedar Springs Ranch Inc.  
09-25-12 Filed: Certificate of Service of Cedar Springs Ranch Inc.'s  
Answer to First Set of Interrogatories and Request for  
Production of Documents  
09-27-12 Filed: CERTIFICATE OF MAILING/SERVICE

Printed: 05/06/16 09:52:17

Page 4

09-27-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
10-01-12 Filed: Certificate of Service of Responses to Interrogatories  
1-18 and Requests for Production of Documents 1-14- to  
Plaintiff  
10-05-12 Filed: Certificate of Service of Amended Responses to Requests  
for Production of Documents 1-14 to Plaintiff  
10-09-12 Filed: Certificate of Service of Defendant Cedar Springs Ranch  
Inc.'s First Set of Interrogatories and Request for Production  
of Documents  
10-12-12 Filed: Notice of Withdrawal of Knute A. Rife as Counsel for  
Plaintiff  
10-25-12 Filed: Certificate of Service of Defendant Dale Dorius' First  
Set of Interrogatories and Requests for Production of Documents  
to Plaintiff  
11-08-12 Filed: CERTIFICATE OF MAILING/SERVICE RESPONSES TO DEFENDANT  
CEDAR SPRINGS RANCH'S FIRST SET OF INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF  
11-08-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
12-03-12 Filed: NOTICE OF DEPOSITION - PATRICK LILEY  
12-03-12 Filed: NOTICE OF DEPOSITION - FRANK PIPPY  
12-03-12 Filed: NOTICE OF DEPOSITION [DAVID VIGOS]  
12-03-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
12-03-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
12-03-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
12-21-12 Filed: CERTIFICATE OF MAILING/SERVICE RESPONSES TO DEFENDANT  
DALE DORIUS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS  
12-21-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
12-26-12 Filed return: RETURN OF SERVICE upon DAVID VIGOS for  
Party Served: UTAH DEPARTMENT OF TRANSPORTAT  
Service Type: Personal  
Service Date: December 19, 2012  
12-26-12 Filed: RETURN OF ELECTRONIC NOTIFICATION  
01-02-13 Filed: NOTICE OF INTENT TO SERVE SUBPOENAS  
01-02-13 Filed: RETURN OF ELECTRONIC NOTIFICATION  
01-17-13 Filed: AMENDED NOTICE OF DEPOSITION OF FRANK PIPPY  
01-17-13 Filed: RETURN OF ELECTRONIC NOTIFICATION  
01-25-13 Filed: Stipulated Motion to Dismiss Juab County  
Filed by: JUAB COUNTY,

01-30-13 Filed order: Order Dismissing Juab County  
Judge JAMES BRADY  
Signed January 29, 2013

02-05-13 Filed: CERTIFICATE OF MAILING/SERVICE OF DEFENDANT DALE DORIUS'  
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

02-06-13 Filed: NOTICE OF CONTINUED DEPOSITION OF FRANK PIPPY

02-06-13 Filed: RETURN OF ELECTRONIC NOTIFICATION

02-12-13 Filed: AMENDED NOTICE OF CONTINUED DEPOSITION OF FRANK PIPPY

02-12-13 Filed: RETURN OF ELECTRONIC NOTIFICATION

02-21-13 Filed: CERTIFICATE OF MAILING/SERVICE SUPPLEMENTAL RESPONSES TO  
DEFENDANT DALE DORIUS' FIRST SET OF INTERROGATORIES AND REQUEST  
FOR DOCUMENTS

02-21-13 Filed: CERTIFICATE OF MAILING/SERVICE PLAINTIFF'S RESPONSES TO  
DEFENDANT DALE DORIUS' SECOND SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS

02-21-13 Filed: RETURN OF ELECTRONIC NOTIFICATION

03-05-13 Filed: CERTIFICATE OF MAILING/SERVICE : UTAH DEPARTMENT OF  
TRANSPORTATION'S SUPPLEMENTAL INITIAL DISCLOSURES

03-05-13 Filed: RETURN OF ELECTRONIC NOTIFICATION

04-09-13 Filed: Other Notice of Deposition of Jared Jensen

04-09-13 Filed: Other Notice of Deposition of Dale Dorius

04-09-13 Filed: Return of Electronic Notification

04-29-13 Filed: Certificate of Mailing/Service : Utah Department of  
Transportation's Supplemental Initial Disclosures

04-29-13 Filed: Return of Electronic Notification

05-06-13 Filed: Certificate of Mailing/Service Plaintiff's First  
Supplemental Initial Disclosures

05-06-13 Filed: Return of Electronic Notification

05-16-13 Filed: Certificate of Mailing/Service : Utah Department of  
Transportation's Third Supplemental Initial Disclosures

05-16-13 Filed: Return of Electronic Notification

08-27-13 Filed: Certificate of Mailing/Service Plaintiff's Second  
Supplemental Initial Disclosures

08-27-13 Filed: Return of Electronic Notification

08-29-13 Filed: Declaration of Jackie Christensen

08-29-13 Filed: Return of Electronic Notification

09-12-13 Filed: Certificate of Mailing/Service Plaintiff's Third  
Supplemental Initial Disclosures

09-12-13 Filed: Return of Electronic Notification

Printed: 05/06/16 09:52:18

Page 6

01-02-14 Filed: Appearance of Counsel  
01-02-14 Filed: Return of Electronic Notification  
01-16-14 Filed: Motion for Partial Summary Judgment  
Filed by: DORIUS, DALE  
01-16-14 Filed: Memorandum in Support of Motion for Partial Summary  
Judgment (Hearing Requested)  
01-16-14 Filed: Return of Electronic Notification  
01-16-14 Filed: Return of Electronic Notification  
02-18-14 Filed: Memorandum In Opposition to Defendant Dale Doriuss  
Motion  
02-18-14 Filed: Exhibits A - E to Memorandum in Opposition to Defendant  
Dale Doriuss Motion  
02-18-14 Filed: Return of Electronic Notification  
02-25-14 Filed: Reply Memorandum in Support of Defendant Dale Doriuss  
Motion for Partial Summary Judgment  
02-25-14 Filed: Return of Electronic Notification  
02-25-14 Filed: Request/Notice to Submit Defendants Motion for Partial  
Summary Judgment  
02-25-14 Filed: Return of Electronic Notification  
03-11-14 Filed: Notice of Hearing  
03-11-14 Filed: Return of Electronic Notification  
03-28-14 MOTION HEARING scheduled on May 20, 2014 at 01:30 PM in Juab  
County Court with Judge BRADY.  
05-28-14 Filed: Order (Proposed) Granting Defendant Dale Doriuss Motion  
for Summary Judgment  
05-28-14 Filed: Return of Electronic Notification  
05-29-14 Filed order: Order Granting Defendant Dale Doriuss Motion for  
Summary Judgment  
Judge JAMES BRADY  
Signed May 29, 2014  
05-29-14 Filed: Return of Electronic Notification  
05-30-14 Note: All claims against Defendant Dale Doriuss are dismissed  
with prejudice.  
05-30-14 Minute Entry - Minutes for ORAL ARGUMENTS  
Judge: JAMES BRADY  
Clerk: taunyag  
PRESENT  
Plaintiff's Attorney(s): S BROOK MILLARD  
Defendant's Attorney(s): JOEL A FERRE  
Printed: 05/06/16 09:52:18 Page 7

TANNER A STRICKLAND LENART

Audio

Tape Count: 1:38:33

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HEARING

This matter is before the court for Oral Arguments on Defendant Dale Dorius's Motion for Summary Judgment.

Arguments are given by Attorney Tanner S. Lenart and Attorney S. Brook Millard. Court grants Motion for Summary Judgment and outlines ruling. Defense counsel, Tanner S. Lenart to prepare the order.

08-11-14 Filed: Notice for Case 120600012 ID 16111713

08-11-14 Notice - NOTICE for Case 120600012 ID 16111743

FINAL PRETRIAL CONFERENCE is scheduled.

Date: 09/09/2014

Time: 02:00 p.m.

Location: Juab County Court  
102 East 200 North

NEPHI, UT 84648

Before Judge: JAMES BRADY

The Court directs all remaining parties to attend. Failure of any party to attend may result in entry of default of that party, or dismissal of that party's claims.

08-11-14 FINAL PRETRIAL CONFERENCE scheduled on September 09, 2014 at  
02:00 PM in Juab County Court with Judge BRADY.

08-11-14 Filed: Notice for Case 120600012 ID 16111743

08-25-14 Filed: Notice of Intent to Allocate Fault to Warm Creek Ranch  
Corp.

08-25-14 Filed: Return of Electronic Notification

08-27-14 Filed: Certificate of Service of UDOTs Fourth Supplemental  
Initial Disclosures

08-27-14 Filed: Return of Electronic Notification

09-03-14 Filed: Certificate of Service of UDOTs Expert Witness

Printed: 05/06/16 09:52:18

Page 8

Designation

09-03-14 Filed: Return of Electronic Notification

09-04-14 Filed: Certificate of Service of Plaintiffs Fourth Supp

Disclosure

09-04-14 Filed: Return of Electronic Notification

09-09-14 Minute Entry - Minutes for Pretrial Conference

Judge: JAMES BRADY

Clerk: taunyag

PRESENT

Plaintiff's Attorney(s): S BROOK MILLARD

Defendant's Attorney(s): JENNIFER D REYES

JOEL A FERRE

Audio

Tape Count: 2:00:50

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HEARING

Status of case is discussed. Counsel stipulate to complete Mediation by November 21, 2014.

Counsel request a 3-day Jury Trial be scheduled.

Motion in Limine will be filed by counsel.

Trial Order will be mailed out to the parties.

JURY TRIAL is scheduled.

Date: 03/03/2015

Time: 09:00 a.m.

Location: Juab County Court

102 East 200 North

NEPHI, UT 84648

Before Judge: JAMES BRADY

JURY TRIAL is scheduled.

Date: 03/04/2015



Time: 09:00 a.m.

Location: Juab County Court  
102 East 200 North

NEPHI, UT 84648

Before Judge: JAMES BRADY

JURY TRIAL is scheduled.

Date: 03/05/2015

Time: 09:00 a.m.

Location: Juab County Court  
102 East 200 North

NEPHI, UT 84648

Before Judge: JAMES BRADY

PRETRIAL CONFERENCE.

Date: 02/03/2015

Time: 01:00 p.m.

Location: Juab County Court  
102 East 200 North

NEPHI, UT 84648

Before Judge: JAMES BRADY

Motions submitted on or before 01/06/2015.

09-09-14 JURY TRIAL scheduled on March 03, 2015 at 09:00 AM in Juab  
County Court with Judge BROWN.

09-09-14 JURY TRIAL scheduled on March 04, 2015 at 09:00 AM in Juab  
County Court with Judge BROWN.

09-09-14 JURY TRIAL scheduled on March 05, 2015 at 09:00 AM in Juab  
County Court with Judge BROWN.

09-09-14 PRETRIAL CONFERENCE scheduled on February 03, 2015 at 01:00 PM  
in Juab County Court with Judge BRADY.

09-09-14 Filed order: Trial Order

Judge JAMES BRADY

Signed September 09, 2014

09-16-14 Filed order: Amended Trial Order

Judge JAMES BRADY

Printed: 05/06/16 09:52:18

Page 10

Signed September 16, 2014

10-14-14 Filed: Mediation Disposition Notice  
10-14-14 Filed: Return of Electronic Notification  
11-19-14 Filed: Certificate of Service of UDOTs Fifth Supplemental  
Initial Disclosures  
11-19-14 Filed: Return of Electronic Notification  
12-02-14 Filed: Motion: Defendant Cedar Springs Ranch, Incs., Motion  
for Summary Judgment and Dismissal  
Filed by: CEDAR SPRINGS RANCH INC,  
12-02-14 Filed: Memorandum of Cedar Springs Ranch, Inc., In Support of  
Motion for Summary Judgment and Dismissal  
12-02-14 Filed: Exhibit List  
12-02-14 Filed: Return of Electronic Notification  
12-22-14 Filed: : Notice of Intent to Allocate Fault to Warm Creek Ranch  
Corporation  
12-22-14 Filed: Return of Electronic Notification  
12-24-14 Filed: Memorandum in Opposition to Cedar Springs Ranch Motion  
for Summary Judgment  
12-24-14 Filed: Exhibit 1 to Memorandum in Opposition to Cedar Springs  
Ranch Motion for Summary Judgment  
12-24-14 Filed: Exhibit 2 to Memorandum in Opposition to Cedar Springs  
Ranch Motion for Summary Judgment  
12-24-14 Filed: Exhibit 3 to Memorandum in Opposition to Cedar Springs  
Ranch Motion for Summary Judgment  
12-24-14 Filed: Exhibit 4 to Memorandum in Opposition to Cedar Springs  
Ranch Motion for Summary Judgment  
12-24-14 Filed: Return of Electronic Notification  
01-06-15 Filed: Certificate of Service of UDOTs Sixth Supplemental  
Initial Disclosures  
01-06-15 Filed: Return of Electronic Notification  
01-06-15 Filed: Motion in Limine And Memorandum in Support of Motion in  
Limine  
Filed by: LILEY, PATRICK  
01-06-15 Filed: Return of Electronic Notification  
01-09-15 Filed: Reply Memorandum In Support of Defendant Cedar Springs  
Ranchs Motion for Sumary Judgment and Dismissal  
01-09-15 Filed: Return of Electronic Notification  
01-13-15 Filed: Memorandum Defendant UDOTs Memorandum Opposing  
Plaintiffs Motion to Preclude David Vigos from Testifying About

Printed: 05/06/16 09:52:18

Page 11

Plaintiffs Mental Alertness

01-13-15 Filed: Exhibit A- Deposition of Jean David Vigos (Relevant Portions)

01-13-15 Filed: Return of Electronic Notification

01-16-15 Filed: Jury Instructions Stipulated Courts Stock Preliminary Jury Instructions

01-16-15 Filed: Stipulated Special Verdict Form

01-16-15 Filed: Return of Electronic Notification

01-23-15 Filed: Memorandum of Defendant Cedar Springs Ranch Inc's in Opposition to Plaintiffs Motion to Preclude David Vigos From Testifying About Plaintiffs Mental Alertness

01-23-15 Filed: Exhibits 1-9 to Memorandum of Defendant Cedar Springs Ranch Inc's in Opposition to Plaintiffs Motion to Preclude David Vigos From Testifying About Plaintiffs Mental Alertness

01-23-15 Filed: Return of Electronic Notification

01-23-15 Filed: Jury Instructions Defendant State of Utah's Proposed Jury Instructions

01-23-15 Filed: Return of Electronic Notification

01-29-15 Filed: Request/Notice to Submit: Notice to Submit for Decision

01-29-15 Filed: Return of Electronic Notification

01-29-15 PRETRIAL CONFERENCE rescheduled to February 03, 2015 at 01:03 PM in Juab County Court with Judge BRADY.

02-02-15 Filed: Notice of Judicial Assignment of a Senior Judge

02-02-15 Filed: Certificate of Service- Utah Department of Transportation's Pretrial Disclosures

02-02-15 Filed: Return of Electronic Notification

02-03-15 Minute Entry - Minutes for Pretrial Conference

Judge: DONALD J EYRE

Clerk: raelenec

PRESENT

Plaintiff's Attorney(s): S BROOK MILLARD

Defendant's Attorney(s): JOEL A FERRE

JENNIFER D REYES

Audio

Tape Number: 1 Tape Count: 1:11/1:39

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This matter comes before the Court for Pretrial Conference. Mr.

Ferre addresses the Court regarding the trial dates and requests they remain as scheduled.

Court and counsel discuss trial issues (exhibits, number of jurors to call, etc.).

Pending motions will be submitted to Judge Brown for consideration.  
End Time: 1:48 pm

02-04-15 Filed: Certificate of Service of Plaintiffs Pretrial Disclosures  
02-04-15 Filed: Return of Electronic Notification  
02-05-15 Filed: Certificate of Mailing/Service: Certificate of Service of Defendant Cedar Springs Ranch Inc.s Pre-Trial Disclosures  
02-05-15 Filed: Return of Electronic Notification  
02-12-15 Filed: : Subpoena  
02-12-15 Filed: Return of Electronic Notification  
02-12-15 Filed: Subpoena to Trooper Jared Jensen (with Return of Service)  
02-12-15 Filed: Subpoena to Jacki Christensen (with Return of Service)  
02-12-15 Filed: Subpoena to David Vigos (with Constables Proof of Service)  
02-12-15 Filed: Objection to Plaintiffs Pre-Trial Disclosures  
02-12-15 Filed: Objection to Defendant Cedar Springs Ranchs Pre-Trial Disclosures  
02-12-15 Filed: Certificate of Mailing/Service: Certificate of Service of Subpoena  
02-12-15 Filed: Return of Electronic Notification  
02-12-15 Filed: Return of Electronic Notification  
02-12-15 Filed: Return of Electronic Notification  
02-12-15 Filed: Return of Electronic Notification  
02-12-15 Judge JENNIFER A BROWN assigned.  
02-17-15 Filed return: Return of Service upon JEAN DAVID VIGOS for  
Party Served: PATRICK LILEY  
Service Type: Personal  
Service Date: February 12, 2015  
02-17-15 Filed: Return of Electronic Notification  
02-18-15 Filed: Subpoena to Dale Dorius (with Sheriffs Proof of Service)  
Printed: 05/06/16 09:52:19 Page 13

02-18-15 Filed: Return of Electronic Notification  
02-19-15 Filed: Request/Notice to Submit Plaintiffs Motion In Limine to  
Preclude David Vigos from Testifying About Plaintiffs Mental  
Alertness  
02-19-15 Filed: Return of Electronic Notification  
02-23-15 Filed: Defendant State of Utahs Proposed Voir Dire of the Jury  
Venire  
02-23-15 Filed: Exhibit A- Proposed Voir Dire Examination of the Venire  
02-23-15 Filed: Exhibit B- Courts Modified Jury Voir Dire Examination of  
the Venire  
02-23-15 Filed: Return of Electronic Notification  
02-24-15 Filed: PLAINTIFF PATRICK LILEYS PROPOSED VOIR DIRE OF THE JURY  
VENIRE  
02-24-15 Filed: Exhibit 1  
02-24-15 Filed: Return of Electronic Notification  
03-03-15 Minute Entry - Minutes for Jury Trial  
Judge: JENNIFER A BROWN  
Clerk: raelenec  
PRESENT  
Plaintiff(s): PATRICK LILEY  
Defendant(s): DALE DORIUS  
Plaintiff's Attorney(s): S BROOK MILLARD  
Defendant's Attorney(s): JOEL A FERRE  
JENNIFER D REYES  
TANNER A STRICKLAND LENART  
  
Audio  
Tape Number: 1 Tape Count: 9:21

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This matter comes before the Court for day one of jury trial.

Court and counsel meet in chambers off the record regarding the pending motions. Court makes findings and denies the motion for summary judgment, denies the motion to preclude testimony of David Vigos, as to the State's Objections to Plaintiff's pre-trial disclosures the highway patrol report is reserved, affidavit of Tony Dick is excluded, photographs of fence/scene are allowed with foundation, photographs of cattle are excluded, Juab County Sheriff

records are excluded, and as to the State's Objections to Cedar Springs' Ranch pre-trial disclosures the highway patrol report is reserved, photographs of fence/scene are allowed with foundation and deposition transcripts are excluded.

TIME: 9:21 AM Jurors are welcomed and thanked for their patience and appearance.

TIME: 9:25 AM Potential jurors are sworn in. Voir dire begins.

TIME: 9:43 AM Court takes a brief recess.

TIME: 9:57 AM Voir dire continues in chambers.

TIME: 11:47 AM Court resumes in the court room. Jurors selected to serve on the case: 1-2, 2-3, 3-12, 4-13, 5-14, 6-17, 7-18, 8-23 and 9-24.

TIME: 11:50 AM Remaining jurors are thanked and excused.

TIME: 11:50 AM Jurors are seated and given the oath for trial jurors.

TIME: 11:52 AM Preliminary Instructions are read to the jury by the Court.

TIME: 12:11 PM Jurors are excused for the lunch recess. Jurors admonished by the Court as to their conduct during the lunch break and instructed to return at 1:00 pm.

TIME: 12:12 PM Court is in recess.

TIME: 1:10 PM Court reconvenes with the jury and counsel for both parties present. Mr. Millard gives opening arguments.

TIME: 1:29 PM Mr. Ferre gives opening arguments.

TIME: 1:36 PM Ms. Reyes gives opening arguments.

TIME: 1:42 PM Patrick Liley is sworn in and directed by Mr. Millard.

TIME: 2:30 PM Exhibit 6 is marked and identified.

TIME: 2:48 PM Exhibits 1 and 2 are marked, identified and received.

TIME: 2:53 PM Exhibit 7 is marked, identified and received.

TIME: 2:58 PM Exhibit 3 is marked, identified and received.

TIME: 3:04 PM Court takes a brief recess.

TIME: 3:27 PM Court reconvenes with the jury and counsel for both parties present. Mr. Ferre cross examines the witness.

TIME: 3:45 PM Exhibit 34 is marked, identified and received.

TIME: 4:02 PM Ms. Reyes cross examines the witness.

TIME: 4:13 PM Mr. Millard redirects the witness.

TIME: 4:27 PM Witness is excused.

TIME: 4:29 PM Austin Liley is sworn in and directed by Mr. Millard.

TIME: 4:42 PM Mr. Strickland Lenart cross examines the witness.

TIME: 4:46 PM Exhibit 43 is marked, identified and received.

TIME: 4:48 PM Ms. Reyes cross examines the witness.

TIME: 4:52 PM Mr. Millard redirects the witness.

TIME: 4:53 PM Witness is excused.

TIME: 4:54 PM Court in recess. Jurors are instructed and admonished to be present tomorrow morning at 8:30 am.



03-03-15 Filed order: Court's Stock Preliminary Jury Instructions

Judge JENNIFER A BROWN

Signed March 03, 2015

03-03-15 Filed: Peremptory List

03-04-15 Minute Entry - Minutes for JURY TRIAL DAY 2

Judge: JENNIFER A BROWN

Clerk: taunyag

PRESENT

Plaintiff(s): PATRICK LILEY

Defendant(s): DALE DORIUS

Plaintiff's Attorney(s): S BROOK MILLARD

Defendant's Attorney(s): JOEL A FERRE

JENNIFER D REYES

TANNER A STRICKLAND LENART

Audio

Tape Count: 8:37:00

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Court reconvenes with the jury and counsel for all parties being present. Mr. Millard advises the Court regarding the exhibit 7-maps were shown to a representative of UDOT and they stipulate that the maps marked are the same maps shown on the projector yesterday in open court.

TIME: 8:43 AM David Ellis Edmonds is sworn and examined by counsel.

TIME: 8:51 AM Frank Norris Pippy is sworn and examined by counsel. Some photos from exhibit 6 are shown and identified by the witness. Witness opens and reads from his deposition.

TIME: 10:09 AM Court in recess for the morning break.

TIME: 10:32 AM Court reconvenes with the jury and counsel for all parties being present.

TIME: 10:33 AM Lia Pretorius is sworn and examined by counsel Mr. Millard only.

TIME: 10:42 AM Trooper Jared Allen Jensen is sworn and examined by counsel. Witness opens and reads from his deposition.

TIME: 11:03 AM Defendant Dale M. Dorius is sworn and examined by counsel. Exhibit 5 is stipulated to by counsel and received. Exhibit 5 is marked and identified. Some photos from exhibit 6 are shown and identified by the witness.

TIME: 11:32 AM Court in a short recess at the request of the plaintiff counsel.

TIME: 11:45 AM Counsel met in chambers to take up matters outside the presence of the jurors.

TIME: 11:55 AM Court in recess for the lunch break.

TIME: 12:56 PM Court reconvenes with the jury and counsel for all parties being present. Robert Westover is sworn and examined by counsel. Exhibit 32 is marked, identified and received. Attorney Ferre reserves this witness.

TIME: 1:16 PM Plaintiff rests. The jury is excused to take up matters outside of their presence.

TIME: 1:17 PM Mr. Ferre argues motion for directed verdict on behalf of defendant, Utah Department of Transportation. Mr. Millard responds. Mr. Ferre gives rebuttal and submits the motion.  
TIME: 1:34 PM The Court outlines ruling and grants the motion for the directed verdict. Mr. Ferre to submit order.

TIME: 1:37 PM Ms. Reyes argues motion for directed verdict on behalf of defendants, Dale Dorius and Cedar Springs Ranch Inc. Mr. Millard responds. Ms. Reyes gives rebuttal and submits the motion.  
TIME: 1:48 PM The Court outlines ruling and denies the motion for the directed verdict.

TIME: 1:50 PM Ms. Reyes advises the Court regarding Warm Spring Ranch. Corrections to the Jury Instructions are discussed.

TIME: 1:55 PM Jurors brought back into the courtroom. Jurors are advised of the dismissal of the party, Utah Department of Transportation.

TIME: 2:01 PM Dr. Jean David Vigos is sworn and examined by counsel. Witness opens and reads from his deposition. Some photos from exhibit 6 are shown and identified by the witness.

TIME: 2:44 PM Instruction given to the Jury regarding statements from last witness.

TIME: 2:47 PM The jury is excused for afternoon break and for counsel to take up matters outside of their presence.

TIME: 2:48 PM Ms. Reyes advises the Court and requests judicial notice of case #140907265. Mr. Millard responds.

TIME: 2:58 PM Court takes matter under advisement. Court in recess.

TIME: 4:02 PM Court outlines ruling.

TIME: 4:05 PM Court in recess.

TIME: 4:27 PM Court reconvenes with the jury and counsel for all parties being present. Plaintiff is sworn and examined by counsel. Exhibit 1a is marked, identified and received.

TIME: 4:54 PM Defense rests.

TIME: 4:55 PM Jurors are excused for the day and admonished by the Court.

TIME: 4:56 PM Court in recess.

TIME: 5:17 PM Court reviews the proposed jury instructions in chambers with counsel.

TIME: 6:11 PM Court in recess for the day.

TIME: 8:37:00

03-05-15 Filed order: Final Jury Instructions

Judge JENNIFER A BROWN

Signed March 05, 2015

03-05-15 Filed: Verdict Form

03-05-15 Notice - Final Exhibit List

03-05-15 Minute Entry - Minutes for JURY TRIAL DAY 3

Judge: JENNIFER A BROWN

Clerk: raelenec

PRESENT

Plaintiff(s): PATRICK LILEY

Printed: 05/06/16 09:52:20

Page 20

Defendant(s): DALE DORIUS

Plaintiff's Attorney(s): S BROOK MILLARD

Defendant's Attorney(s): JENNIFER D REYES

Audio

Tape Number: 1 Tape Count: 8:38

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This matter comes before the Court for day three of jury trial. Court and counsel meet in chambers and discuss the final jury instructions.

TIME: 8:51 AM Court takes a brief recess.

TIME: 9:29 AM Court resumes with counsel present. Court and counsel agree upon the final instructions prepared.

TIME: 9:30 AM Jurors enter the court room. Court reads the final jury instructions to the jury panel.

TIME: 9:53 AM Mr. Millard gives closing arguments.

TIME: 11:02 AM Ms. Reyes gives closing arguments.

TIME: 11:36 AM Court and counsel have a sidebar discussion at the bench.

TIME: 11:43 AM Mr. Millard gives rebuttal arguments.

TIME: 12:04 PM Alternate juror is thanked and excused.

TIME: 12:06 PM Bailiff is sworn in. Jurors are excused to deliberate.

TIME: 12:07 PM Court is in recess.

TIME: 2:45 PM Court resumes with the jurors present.

TIME: 2:46 PM Verdict is read in open court by the clerk.

TIME: 2:50 PM Jurors are excused and thanked for their service.

TIME: 2:52 PM Court is in recess.

TIME: 8:38

)3-05-15 Filed: Signed Exhibit List  
)3-06-15 Filed: Judgment (Proposed) Judgment on Jury Verdict  
)3-06-15 Filed: Return of Electronic Notification  
)3-10-15 Filed: Certificate of Service-Order Granting UDOTs Motion for  
Directed Verdict  
)3-10-15 Filed: Return of Electronic Notification  
)3-20-15 Filed: Order (Proposed) Granting Utah Department of  
Transportations Motion for Directed Verdict  
)3-20-15 Filed: Return of Electronic Notification  
)3-20-15 Filed judgment: Judgment on Jury Verdict  
Judge JENNIFER A BROWN  
Signed March 20, 2015  
)3-20-15 Judgment #1 Entered \$ 259199.00  
Debtor: CEDAR SPRINGS RANCH INC  
Creditor: PATRICK LILEY  
259,199.00 Principal  
259,199.00 Judgment Grand Total  
)3-20-15 Filed: Return of Electronic Notification  
)3-20-15 Case Disposition is Judgment  
Disposition Judge is JENNIFER A BROWN  
)3-20-15 Filed order: Order Granting Utah Department of Transportations  
Motion for Directed Verdict  
Judge JENNIFER A BROWN  
Signed March 20, 2015  
)3-20-15 Filed: Return of Electronic Notification  
)3-25-15 Filed: Notice of Entry of Judgment on Jury Verdict  
)3-25-15 Filed: Return of Electronic Notification  
)3-27-15 Filed: Memorandum of Costs Motion for Memorandum of Costs and  
Disbursements  
)3-27-15 Filed: Declaration of S. Brook Millard and Verification in  
Support of Plaintiffs Motion for Costs and Memorandum in Support  
of Costs and Disbursements

03-27-15 Filed: Return of Electronic Notification  
03-30-15 Filed: Memorandum of Costs  
03-30-15 Filed: Certificate of Service-UDOTs Verified Memorandum of  
Costs  
03-30-15 Filed: Return of Electronic Notification  
04-02-15 Filed: Notice of Appeal - Civil (not Interlocutory)  
04-02-15 Fee Account created Total Due: 225.00  
04-02-15 APPEAL Payment Received: 225.00  
04-02-15 Filed: Return of Electronic Notification  
04-03-15 Note: Notice of Appeal sent to COA via email.  
04-07-15 Filed: New Appeal Letter from the Supreme Court - Appellate  
Case No. 20150267  
04-07-15 Filed: Order from the Supreme Court  
04-28-15 Filed: Letter of assignment from the Court of Appeals  
04-28-15 Note: Appealed: Case #20150267  
05-19-15 Filed: Motion for Supplemental Proceeding  
Filed by: LILEY, PATRICK  
05-19-15 Filed: Order (Proposed) Order in Supplemental Proceeding  
05-19-15 Filed: Return of Electronic Notification  
05-19-15 Filed: Return of Electronic Notification  
05-20-15 Filed order: Order in Supplemental Proceeding  
Judge JENNIFER A BROWN  
Signed May 20, 2015  
05-20-15 Filed: Return of Electronic Notification  
05-31-15 Filed: TRANSCRIPT for Hearing of 03-03-2015  
05-31-15 Filed: TRANSCRIPT for Hearing of 03-04-2015  
05-31-15 Filed: TRANSCRIPT for Hearing of 03-05-2015  
06-04-15 Note: Transcripts of Jury Trial 3/3/15, 3/4/15 & 3/5/15  
received by the court.  
06-04-15 Filed return: Return of Service -Affidavit of Process Server  
(Order in Supplemental Proceeding-Hearing on 6/30/15 at 1:00  
p.m.) upon DALE DORIUS, REGISTERED AGENT for  
Party Served: CEDAR SPRINGS RANCH INC  
Service Type: Personal  
Service Date: May 27, 2015  
06-04-15 Filed: Ex. A - Order in Supplemental Proceeding  
06-04-15 Filed: Return of Electronic Notification  
06-11-15 Filed: Motion to Continue Order to Show Cause Hearing Scheduled  
for June 30, 2015



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Filed by: CEDAR SPRINGS RANCH INC,

06-11-15 Filed: Order (Proposed) on Motion to Continue Order to Show Cause Hearing Schedule for June 30, 2015

06-11-15 Filed: Return of Electronic Notification

06-18-15 SUPPLEMENTAL ORDER rescheduled to June 30, 2015 at 12:59 PM in Juab County Court with Judge BROWN.

06-23-15 Note: Reason: Counsel's request. Stipulation of counsel motion.

06-23-15 SUPPLEMENTAL ORDER scheduled on August 18, 2015 at 01:00 PM in Juab County Court with Judge BROWN.

06-25-15 Filed order: Order on Motion to Continue Order to Show Cause Hearing Schedule for June 30, 2015

Judge JENNIFER A BROWN

Signed June 25, 2015

06-25-15 Filed: Return of Electronic Notification

08-10-15 Filed: Motion for Stay Pending Appeal

Filed by: CEDAR SPRINGS RANCH INC,

08-10-15 Filed: Memorandum in Support of Motion for Stay Pending Appeal

08-10-15 Filed: Return of Electronic Notification

08-17-15 SUPPLEMENTAL ORDER continued without dat.

Reason: Counsel's request.

12-22-15 Filed: Judgment Roll and Index and Clerk's Certificate

12-22-15 Note: Judgment Roll and Index and Clerk's Certificate emailed to the Court of Appeals. Advised the Court of Appeals that the Record had been uploaded into Google under D4. Gave a box to Robyn B. with Exhibits (1 Black Binder) to send through State Mail

12-22-15 Note: Tracking #55500156765.

04-20-16 Filed: Abstract of Judgment - To Issue (Proposed)

04-20-16 Filed: Return of Electronic Notification

04-21-16 Issued: Abstract of Judgment Issued

Clerk raelenec

04-21-16 Filed: Return of Electronic Notification

04-29-16 Fee Account created Total Due: 3.00

04-29-16 Fee Account created Total Due: 8.00

04-29-16 Fee Account created Total Due: 0.49

04-29-16 CERTIFIED COPIES Payment Received: 3.00

Note: POSTAGE-COPIES

04-29-16 CERTIFICATION Payment Received: 8.00

04-29-16 POSTAGE-COPIES Payment Received: 0.49

Printed: 05/06/16 09:52:20

Page 24

CASE NUMBER 120600012 Personal Injury

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# Addendum 2

**Effective 5/12/2015**

**41-6a-407 Livestock on highway -- Restrictions -- Collision, action for damages.**

(1)

(a) A person who owns or is in possession or control of any livestock may not willfully or negligently permit any of the livestock to stray or remain unaccompanied on a highway, if both sides of the highway are separated from adjoining property by a fence, wall, hedge, sidewalk, curb, lawn, or building.

(b) Subsection (1)(a) does not apply to range stock drifting onto any highway moving to or from their accustomed ranges.

(2)

(a) A person may not drive any livestock upon, over, or across any highway during the period from half an hour after sunset to half an hour before sunrise.

(b) Subsection (2)(a) does not apply if the person has a sufficient number of herders with warning lights on continual duty to open the road to permit the passage of vehicles.

(3) A violation of Subsection (1) or (2) is an infraction.

(4) In any civil action brought for damages caused by collision with any domestic animal or livestock on a highway, there is no presumption that the collision was due to negligence on behalf of the owner or the person in possession of the domestic animal or livestock.

Amended by Chapter 412, 2015 General Session

# **Addendum 3**

4TH DISTRICT COURT - JUAB  
JUAB COUNTY, STATE OF UTAH

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PATRICK LILEY, : MINUTES  
Plaintiff, : JURY TRIAL  
 :  
vs. : Case No: 120600012 PI  
UTAH DEPARTMENT OF TRANSPORTAT Et al, : Judge: JENNIFER A BROWN  
Defendant. : Date: March 3, 2015

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Clerk: raelenec

PRESENT

Plaintiff(s): PATRICK LILEY

Defendant(s): DALE DORIUS

Plaintiff's Attorney(s): S BROOK MILLARD

Defendant's Attorney(s): JOEL A FERRE

JENNIFER D REYES

TANNER A STRICKLAND LENART

Audio

Tape Number: 1 Tape Count: 9:21

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TRIAL

This matter comes before the Court for day one of jury trial.

Court and counsel meet in chambers off the record regarding the pending motions. Court makes findings and denies the motion for summary judgment, denies the motion to preclude testimony of David Vigos, as to the State's Objections to Plaintiff's pre-trial disclosures the highway patrol report is reserved, affidavit of Tony Dick is excluded, photographs of fence/scene are allowed with foundation, photographs of cattle are excluded, Juab County Sheriff records are excluded, and as to the State's Objections to Cedar Springs' Ranch pre-trial disclosures the highway patrol report is reserved, photographs of fence/scene are allowed with foundation and deposition transcripts are excluded.

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TIME: 9:21 AM Jurors are welcomed and thanked for their patience and appearance.

TIME: 9:25 AM Potential jurors are sworn in. Voir dire begins.

TIME: 9:43 AM Court takes a brief recess.

TIME: 9:57 AM Voir dire continues in chambers.

TIME: 11:47 AM Court resumes in the court room. Jurors selected to serve on the case: 1-2, 2-3, 3-12, 4-13, 5-14, 6-17, 7-18, 8-23 and 9-24.

TIME: 11:50 AM Remaining jurors are thanked and excused.

TIME: 11:50 AM Jurors are seated and given the oath for trial jurors.

TIME: 11:52 AM Preliminary Instructions are read to the jury by the Court.

TIME: 12:11 PM Jurors are excused for the lunch recess. Jurors admonished by the Court as to their conduct during the lunch break and instructed to return at 1:00 pm.

TIME: 12:12 PM Court is in recess.

TIME: 1:10 PM Court reconvenes with the jury and counsel for both parties present. Mr. Millard gives opening arguments.

TIME: 1:29 PM Mr. Ferre gives opening arguments.

TIME: 1:36 PM Ms. Reyes gives opening arguments.

TIME: 1:42 PM Patrick Liley is sworn in and directed by Mr. Millard.

TIME: 2:30 PM Exhibit 6 is marked and identified.

TIME: 2:48 PM Exhibits 1 and 2 are marked, identified and received.

TIME: 2:53 PM Exhibit 7 is marked, identified and received.

TIME: 2:58 PM Exhibit 3 is marked, identified and received.

TIME: 3:04 PM Court takes a brief recess.

TIME: 3:27 PM Court reconvenes with the jury and counsel for both parties present. Mr. Ferre cross examines the witness.

TIME: 3:45 PM Exhibit 34 is marked, identified and received.

TIME: 4:02 PM Ms. Reyes cross examines the witness.

TIME: 4:13 PM Mr. Millard redirects the witness.

TIME: 4:27 PM Witness is excused.

TIME: 4:29 PM Austin Liley is sworn in and directed by Mr. Millard.

TIME: 4:42 PM Mr. Strickland Lenart cross examines the witness.

TIME: 4:46 PM Exhibit 43 is marked, identified and received.

TIME: 4:48 PM Ms. Reyes cross examines the witness.

TIME: 4:52 PM Mr. Millard redirects the witness.

TIME: 4:53 PM Witness is excused.

TIME: 4:54 PM Court in recess. Jurors are instructed and admonished to be present tomorrow morning at 8:30 am.



# Addendum 4

The Order of Court is stated below:

Dated: March 20, 2015  
03:30:51 PM

/s/

JENNIFER A. BROWN  
District Court Judge



S. Brook Millard (#7415)  
WRONA GORDON & DuBois, P.C.  
11650 South State Street, Suite 103  
Draper, Utah 84020  
Telephone: (801) 676-5252  
Facsimile: (801) 676-5262  
Email: [millard@wgdlawfirm.com](mailto:millard@wgdlawfirm.com)  
*Attorneys for Plaintiff*

**IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
JUAB COUNTY, STATE OF UTAH**

PATRICK LILEY,

Plaintiff,

vs.

UTAH DEPARTMENT OF  
TRANSPORTATION, a division of the State  
of Utah, JUAB COUNTY, a political  
subdivision of the State of Utah, SANPETE  
COUNTY, a political subdivision of the State  
of Utah, CEDAR SPRINGS RANCH, INC., a  
Utah corporation, and DALE DORIUS, an  
individual,

Defendants.

**JUDGMENT ON JURY VERDICT**

Case No. 120600012

Judge Jennifer A. Brown

A Trial was held on this matter beginning on March 3, 2015 and ending March 5, 2015,  
the Honorable Jennifer A. Brown, Fourth Judicial District Court Judge, presiding. A jury of eight  
(8) persons was regularly impanelled and sworn/acknowledged to try the cause.

Witnesses were sworn and testified.

...

0801

March 20, 2015 03:30 PM

1 of 3

After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court, and the cause was submitted to the jury with directions to return a special verdict form. The jury deliberated and thereafter returned with its special verdict form, signed by the jury foreperson, which verdict provided the following answers:

“YES” to the question: “Was Cedar Springs Ranch Inc. at fault?”;

“YES” to the question: “Was Cedar Springs Ranch, Inc.’s fault a cause of Patrick Liley’s harm?”;

“NO” to the question: “Was Warm Creek Ranch, Inc. at fault?”;

“YES” to the question: “Was Patrick Liley at fault?”;

“YES” to the question: “Was Patrick Liley’s fault a cause of his own harm?”;

“85%” to the question: “What percent of the fault that caused Patrick Liley’s harm is attributable to Cedar Springs Ranch?”;

“0%” to the question: “What percent of the fault that caused Patrick Liley’s harm is attributable to Warm Creek Ranch?”;

“15%” to the question: “What percent of the fault that caused Patrick Liley’s harm is attributable to Patrick Liley?”;

“\$35,000” to the question “What amount fairly compensates Patrick Liley for Past Medical Expenses?”;

“\$0” to the question “What amount fairly compensates Patrick Liley for Other Economic Damages?”;

“\$269,940” to the question “What amount fairly compensates Patrick Liley for Non-

Economic Damages?";

The jury then totaled the amount awarded to fairly compensate Patrick Liley in the amount of \$304,940.

It appearing by reason of said special verdict form that Plaintiff Patrick Liley is entitled to judgment against Defendant Cedar Springs Ranch, Inc., now therefore, the Court hereby ORDERS, ADJUDGES and DECREES as follows:

1. The Plaintiff's award of damages shall be reduced by 15% which is the percentage of fault assigned to him by the jury.
2. The Plaintiff will have and recover a net amount of \$259,199.00 dollars from Defendant Cedar Springs, Inc.
3. The Plaintiff will have and shall be entitled to recover his costs of suit.

IT IS SO ORDERED.

DATED this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

BY THE COURT:

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Honorable Jennifer A. Brown  
Fourth Judicial District Court Judge