

1991

Cynthia Gines, Cynthia Gines, Randy Bud Gines,
Sylvia Rae Gines v. Ingersoll-Rand Company,
Simmons-Rand Company, Lee-Norse Company :
Reply Brief

Utah Supreme Court

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DOCKET NO.

BRIEF

910516

IN THE SUPREME COURT OF THE STATE OF UTAH

CYNTHIA GINES, individually and	:	
CYNTHIA GINES as guardian ad litem	:	
for RANDY BUD GINES and SYLVIA	:	
RAE GINES, minors,	:	Case No. 910516
	:	
Plaintiffs/Appellees,	:	Priority No. 12
	:	
v.	:	
	:	
INGERSOLL-RAND COMPANY, a New	:	
Jersey corporation; SIMMONS-RAND	:	
COMPANY, a Delaware corporation;	:	
and, LEE-NORSE COMPANY, a	:	
Delaware corporation,	:	
	:	
Defendants/Appellants.	:	

REPLY BRIEF OF APPELLEES

CERTIFICATION OF QUESTION OF LAW BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, JUDGE J. THOMAS GREENE

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CLERK SUPREME COURT
UTAH

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Pursuant to Utah R. App. P. 24(c), Plaintiff/Appellee Cynthia Gines ("Gines") submits her Reply Brief herein.

ARGUMENT

I. STATUTORY ANALYSIS

Appellant Ingersoll-Rand ("I-R") suggests that the definition of fault found at Utah Code Ann. § 78-27-37(2) extends "to any act or omission which proximately causes damages." See, Defendant's Reply Brief at p.1. I-R argues from this that an employer's conduct may thus be considered as "fault" even though an employer can have no fault. See, Gines primary brief at p.11.

Aside from the obvious inconsistency in suggesting that one without fault may nevertheless fit within the definition of fault, this interpretation is inaccurate. Section 37(2) defines "fault" as "any actionable breach of legal duty, act, or omission... ." Thus, to be "fault" the breach of duty, act or omission must be actionable. In other words, it must be capable of forming the basis for an action at law. This interpretation is buttressed by the examples of claims contemplated in that section (negligence, strict liability, etc.), all of which may be the basis for an action for damages.

I-R's argument that "fault" may encompass fault-free conduct which cannot be the basis for an action not only defies logic and common sense, it subverts the plain language and intent of this section.

II. LEGISLATIVE INTENT.

I-R challenges Gines' depiction of the intent behind the enactment of this Act by attacking Mr. Lloyd's affidavit. While it is true the Mr. Lloyd is not a legislator, his affidavit demonstrates his direct and significant participation in the legislative process on behalf of the largest entity interested in the issue of employer immunity: the Workers Compensation Fund of Utah. I-R's suggestion that the views of one having such direct involvement be discounted because he is "only" a lobbyist¹ asks this Court to ignore a source with the greatest knowledge and assistance.²

Be that as it may, Defendant ignores the best indicator of legislative intent -- the actions of the legislature itself. Its modification of the language of proposed Section 39 (Utah Code Ann. §78-27-39) to eliminate from consideration by the jury the fault

¹See, I-R Reply Brief at P.2.

²This Court undoubtedly recognizes that lobbyists are an essential part of the legislative process without whose input and assistance much legislation would not be possible.

attributable to "each other person whose fault contributed to the injury or damages"³ is the strongest indication of the legislative intent possible. It clearly shows that fault of non-parties is not to be considered or compared.

III. LAW OF OTHER JURISDICTIONS.

I-R's persistent reference to the law of other jurisdictions is of little avail. Each of those decisions interpreted statutes using language different from Utah's, in the context of worker's compensation statutes different from Utah's and in circumstances where the legislative intent supported the courts' conclusions.

The issue before the Court today requires interpretation of Utah law, in the context of Utah's worker's compensation legislation by reference to the unambiguous language of this statute and the clear legislative intent behind it.

Defendant's reliance on the law of other jurisdictions is misplaced and provides little support for the interpretation it seeks.

³Proposed Section 39 permitted the jury to determine the proportionate fault "attributable to each person seeking recovery, to each defendant, and to each other person whose fault contributed to the injury or damages." As enacted, Section 39 provides only that the jury shall determine the proportionate fault "attributable to each person seeking recovery and to each defendant."

IV. CONSTITUTIONAL ARGUMENT.

I-R's reading of the constitutional prohibition against "piecemeal" abrogation of actions for wrongful death is unreasonably narrow. See, Utah Const. Art. XVI, Section 5; *Malan v. Lewis*, 693 P.2d 661, 667 (Utah 1984). This constitutional protection prevents both abrogation of rights of action and statutory limitation. *Id.* The interpretation of this Act urged by defendant both abrogates and unreasonably limits recovery for wrongful death in the industrial setting.

Defendant contends that this Court's concern over piecemeal abrogation relates only to differing effects of legislation on different classes of persons. See, I-R Reply Brief at 6. If that is so, the Court's concern is properly directed at the untoward effect of the statutory interpretation urged by Defendant, as it would unfairly impact one class of wrongful death plaintiffs -- those who have lost their decedent in industrial accidents.

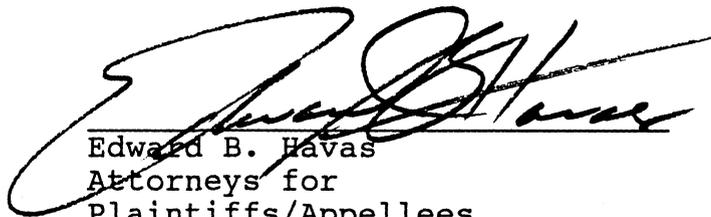
The interpretation proposed by defendant would treat claims for industrial deaths quite differently than those for wrongful deaths in other circumstances. The interpretation urged by defendant would reduce the available recovery to the damaged parties by allocation of fault to the employer who cannot, by operation of law, be required to answer in damages. This statutory limitation would occur without justification or a substitute

benefit. The interpretation urged by defendant contravenes the constitutional prohibition of Utah Const. Art. XVI, Section 5 and cannot be sustained.

CONCLUSION

The statutory language clearly and unambiguously precludes consideration of an employer's "fault." Any other construction runs counter to the language and intent of the statute and the protections of Utah Const. Art. XVI, Section 5. This Court should conclude that the employer's conduct may not be considered by the jury.

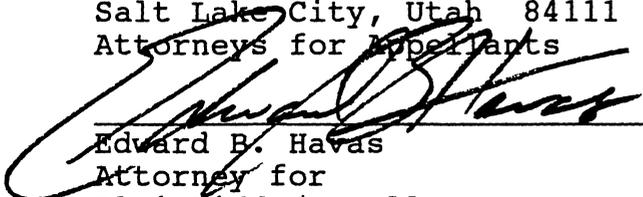
Respectfully submitted this 20th day of May, 1992.


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CERTIFICATE OF SERVICE

I hereby certify that 4 true and correct copies of the **REPLY BRIEF OF APPELLEES** were mailed first class, postage pre-paid, this 20th day of May, 1992, to the following parties:

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