

1991

Patricia Christiansen v. Flexi-Lease Inc., dba
Holiday Rent-A-Car, and Devon K. Hammer :
Petition for Rehearing

Utah Supreme Court

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Robert L. Stevens; Richards, Brandt, Miller and Nelson; Attorneys for Respondents.

Samuel King; Attorney for Appellant.

Recommended Citation

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UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

PATRICIA CHRISTIANSEN,)
Plaintiff and Appellant, :

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919700

vs. :

FLEXI-LEASE, INC., dba HOLIDAY)
RENT-A-CAR, and DEVON K. HAMMER,)
Defendant.)

HOLIDAY RENT-A-CAR, dba FLEXI-)
LEASE, INC.,)

Third-Party Plaintiff,)

vs.)

HAROLD T. HINCKLEY and REX)
HOWELL, dba AIRPORT SHUTTLE)
PARKING,)

CASE NO. 19700

Third-Party Defendants and)
Respondents.)

Priority 14b

DON MAW and BEVERLY MAW,)
Intervening plaintiffs,)

vs.)

DAVID LINGARD, JOHN LINGARD and)
CRAIG LINGARD,)

Defendants.)

RESPONDENTS' PETITION FOR REHEARING TO CORRECT
FACTUAL STATEMENTS IN OPINION

ON APPEAL FROM THE JUDGMENT OF JUDGE SCOTT DANIELS
THIRD DISTRICT COURT, SALT LAKE COUNTY

Robert L. Stevens
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& NELSON
Attorneys for Third-Party
Defendants and Respondents
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Rex Howell, dba Airport
Shuttle Parking
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Salt Lake City, Utah 84144

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Christiansen
301 Gump & Ayers Building
2120 South 1300 East
Salt Lake City, Utah 84106

FILED

JUN 18 1987

IN THE SUPREME COURT OF THE STATE OF UTAH

PATRICIA CHRISTIANSEN,)
Plaintiff and Appellant, :
vs. :
FLEXI-LEASE, INC., dba HOLIDAY)
RENT-A-CAR, and DEVON K. HAMMER, :
Defendant.)

HOLIDAY RENT-A-CAR, dba FLEXI- :
LEASE, INC.,)
Third-Party Plaintiff, :
vs.)

HAROLD T. HINCKLEY and REX :
HOWELL, dba AIRPORT SHUTTLE :
PARKING,)
Third-Party Defendants and :
Respondents.)

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ARGUMENT

Pursuant to Rule 35 of the Rules of Appellate Procedure, respondents Harold T. Hinckley and Rex Howell dba Airport Shuttle Parking (hereinafter referred to as Airport) petition the Court for a rehearing of this matter for the purpose of correcting certain factual errors in the Statement of Facts as reflected in the Court's opinion filed herein May 29, 1987. For the Court's assistance, copies of the relevant documents from the Court's record are attached hereto. The undersigned certifies that this position is presented in good faith and not for delay.

FACTUAL ERRORS

- I. JUDGE CROFT'S ORDER OF BIFURCATION PROVIDED FOR THE TRIAL OF THE CONTRACTUAL ISSUE BETWEEN AIRPORT AND HOLIDAY RENT-A-CAR BEFORE THE TRIAL OF PLAINTIFF'S TORT CLAIM AGAINST HOLIDAY NOT VICE VERSA AS STATED IN THIS COURT'S OPINION.

Page 2 of the opinion issued by this Court makes specific reference to the bifurcation of issues for trial. The opinion states:

The trial of this action was bifurcated so that the issue of Holiday's liability to Christiansen in tort could first be determined. After this proceeding was concluded, the issue of contractual liability of Airport to Holiday would be considered.

In fact the Order was exactly opposite. Judge Croft specifically ordered that the contract issues of the Third-Party Complaint between Holiday and Airport would be tried before a trial of the underlying tort claim. A copy of

the Order from this Court's record is attached as Exhibit "A".

The Order provides:

It is hereby ordered that the trial of the Third-Party Complaint and the Complaint in Intervention herein shall be bifurcated and conducted separately from the trial of the underlying Complaint for personal injury and damages. The trial of those issues raised in the Third-Party Complaint and Complaint in Intervention will be conducted commencing on October 5, 1982 at 10:00 a.m. in the above-entitled Court if a judge is available. The issues therein to be tried are the issues of liability as between all parties except the plaintiff.

Those issues raised by plaintiff's Complaint herein are reserved for trial at a subsequent date to be set by the Court if trial upon them is necessary. (Emphasis added.)

- II. CONTRARY TO THE COURT'S RECITATION OF FACTS, JUDGE FISHLER MADE NO FINDING AS TO WHETHER THE \$246,033.08 STIPULATED JUDGMENT WAS APPROPRIATE IN VIEW OF THE SCOPE OF PLAINTIFF'S INJURY.

At Page 3 of this Court's Decision, the Court states the following facts:

The day following the execution of the Settlement Agreement, Christiansen obtained a court-approved stipulated judgment against Holiday in the amount of \$246,033.08. Airport appeared at the hearing and objected to the amount of the judgment, but the Court found that there was a rational basis for the damage amount. (Emphasis added.)

In fact, the trial Court made no findings of fact regarding the judgment amount and specifically refused to get involved in the dollar and cents determination.

This matter was litigated in the Third District Court at a time when the court was utilizing a central scheduling system and did not make assignments of cases to trial judges until shortly before trial. At the time, Judge Bryant Croft was acting as presiding judge and Judge Philip Fishler was acting as law and motion judge.

Judge Croft ordered the bifurcation of the case at oral hearing on September 29, 1982. He signed his Bifurcation Order (Exhibit "A") on September 30, 1982.

Plaintiff and defendant Holiday signed their Settlement Agreement on September 30, 1982. A copy of the Settlement Agreement from this Court's record is attached hereto as Exhibit "B". On that same day, plaintiffs and Holiday appeared before the law and motion judge, Judge Fishler, requesting that he hold an evidentiary hearing as called for in the Settlement Agreement and that he determine the amount of plaintiff's damages.

Judge Fishler refused to take evidence on the amount of damages or to make any finding about them. By Minute Entry dated September 30, 1982, Judge Fishler ordered:

Based upon the bifurcated Order signed by Judge Croft, this Court feels that it cannot enter judgment nor hear any matter on plaintiff's Complaint at this time. The issues on negligence of defendant, proximate cause and extent of injuries will have to be heard at trial.

(A copy of the Minute Entry from this Court's record is attached as Exhibit "C".)

After it appeared that Judge Croft's Order of Bifurcation would prevent any attempt to have Judge Fishler hold an evidentiary hearing, plaintiff sought review of that Order by Judge Croft. A copy of the transcript of that hearing from the Court's record is attached hereto as Exhibit "D".

During that hearing, Judge Croft reaffirmed his position that he had bifurcated the case, that the issues of the Third-Party Complaint and Complaint in Intervention only were to be tried on the upcoming trial date and that any attempt to hold an evidentiary hearing as to damages under plaintiff's original Complaint, before the trial as to the Third-Party Complaint and Complaint in Intervention, would be contrary to his Order. In summing up his intention, Judge Croft stated:

In this one parting statement, I will say it is not my intent to tell, to make any ruling that Judge Fishler can't do anything he chooses to do. But I certainly don't think that he should take it upon himself to make a determination himself on the question of damages. (Emphasis added.)

The judges having refused to hold an evidentiary hearing as to plaintiff's judgment amount, plaintiff and defendant Holiday entered into a stipulation on damage. This was orally presented to Judge Fishler the next day, October 1, 1982. Plaintiff submitted a judgment form for Judge Fishler to sign for the entry of judgment in the amount of \$246,033.08. Plaintiff also attempted to present evidence. Affidavits of plaintiff and others purporting to support the amount of judgment and the Settlement Agreement were marked. But these

proposed exhibits were not received as such by the Court and were withdrawn as reflected by the Court's Minute Entry dated October 1, 1982. (Exhibit "E")

Based upon the oral stipulation of plaintiff and defendant Holiday, Judge Fishler entered the stipulated judgment in the amount of \$246,033.08. A copy of the Judgment from the Court's record is attached hereto as Exhibit "F". The Judgment specifically provided:

Plaintiff is given judgment. The Court finds that it is in the interest of proper civil procedure, and the right of the parties, to settle. The Court declines, though, to participate in the dollar and cents determination of plaintiff's damages. (Emphasis added.)

The form Judgment prepared by plaintiff includes no findings of facts or conclusions of law as would have been required by Rule 52(a) of the Utah Rules of Civil Procedure in the event Judge Fishler was making any findings based upon evidence. There is no finding, whatsoever, indicating that Judge Fishler had reached any conclusion as to the appropriateness of the damage amount. The Order merely reflected that the parties to the Judgment, plaintiff and Holiday, had stipulated to its entry and agreed among themselves that it was appropriate. Judge Fishler had specifically refused to make evidentiary findings.

CONCLUSION

In view of the fact that this case will have continued litigation at the trial court level and presumably be brought to this court again, it is of particular importance that

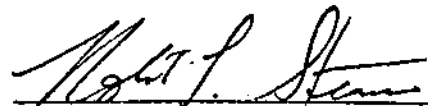
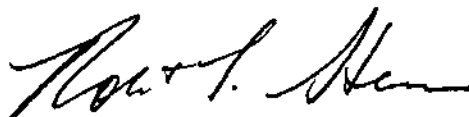
the factual recitation in this Court's decision be accurate. Even though the sections of the factual recitation referred to in this petition do not go to the Court's ultimate holding in this case, there is significant danger that if these errors are allowed to become a part of the Court's final opinion, that they may distort further proceedings.

The fact of the matter is, as reflected by the record, that the bifurcation order provided for the trial of the contract issue first and that there was not and has not been any judicial evaluation or findings regarding the scope or severity of plaintiff's damages.

Respondents pray that the above-referred matters be corrected in the final decision of this Court.

DATED this 12 day of June, 1987.

RICHARDS, BRANDT, MILLER
& NELSON



ROBERT L. STEVENS
ATTORNEYS FOR RESPONDENTS

MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing instrument was mailed, first class, postage prepaid on this 18 day of June, 1987, to the following counsel of record:

Samuel King
James E. Hawkes
Attorneys for Appellant
301 Gump & Ayers Building
2120 South 1300 East
Salt Lake City, Utah 84106

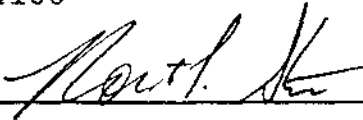


Exhibit A

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

SEP 30 1982

ROBERT L. STEVENS
RICHARDS, BRANDT, MILLER
& NELSON
Attorneys for Third-Party
Defendants Harold T. Hinckley
and Rex Howell
50 South Main Street, 700 CSB Tower
P.O. Box 2465
Salt Lake City, Utah 84110
Telephone: (801) 531-1777

W. Sterling Evans, Clerk 3rd Dist Court
By W. Sterling Evans Deputy Clerk

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

PATRICIA CHRISTIANSEN,
Plaintiff,
vs.
HOLIDAY RENT-A-CAR, d/b/a
FLEXI-LEASE, INC., and
DEVON K. HAMMER,
Defendants.

ORDER OF BIFURCATION

HOLIDAY RENT-A-CAR, d/b/a
FLEXI-LEASE, INC.,
Third-Party
Plaintiff,
vs.
HAROLD T. HINCKLEY and
REX HOWELL, d/b/a AIRPORT
SHUTTLE PARKING,
Third-Party
Defendants.

DON MAW and BEVERLY MAW,
Intervening
Plaintiffs,
vs.
DAVID LINGARD, JOHN
LINGARD and CRAIG LINGARD,
Additional
Third-Party
Defendants.

Civil No. C-81-4453

Third party defendant's Motion for Continuance came on
for hearing on September 29, 1982 at the hour of 2:00 p.m. before

the above-entitled court. Third-party defendant was represented by its attorney, Robert L. Stevens, plaintiff was represented by her attorneys, Samuel King and James Hawkes, and defendant Holiday Rent-A-Car and third-party defendants Lingards were represented by their attorney, Dale Lambert.


At the time of making his argument in support of a Motion to Continue, third-party defendant's counsel made an oral, alternative motion to bifurcate the trial of the Third-Party Complaint from the Complaint herein pursuant to Rule 42(b). Arguments were heard from all sides on this issue and those present waived any objections they may have had to lack of notice regarding the Rule 42(b) motion.

The court having reviewed the arguments enters its Order as follows:

IT IS HEREBY ORDERED that the trial of the Third-Party Complaint ^{and the complaint in intervention} herein shall be bifurcated and conducted separately from the trial of the underlying Complaint for personal injury and damages. The trial of those issues raised in the Third-Party Complaint ^{and complaint in intervention} will be conducted commencing on October 5, 1982 at 10:00 o'clock a.m. in the above-entitled court if a judge is available. ^{The issues therein to be tried are the issues of liability.} Those issues raised by plaintiff's Complaint herein are reserved for trial at a subsequent date to be set by the court if trial upon them is necessary.

DATED this 30th day of September, 1982.

BY THE COURT:

Ble

HONORABLE BRYANT CROFT
Presiding Judge

ATTEST
W. STERLING EVANS
CLERK
BY *W. Sterling Evans*
Deputy Clerk

CERTIFICATE OF MAILING

MAILED, a true and correct copy of the foregoing Order
by first-class mail, postage prepaid, this ____ day of September,
1982 to the folling counsel of record:

Mr. Gerald Nielson
Attorney for Intervening
Plaintiffs
3737 Honeycut Road
Salt Lake City, Utah 84106

Mr. James Hawkes
Attorney for Plaintiff
301 Gump & Ayers Building
2120 South 1300 East
Salt Lake City, Utah 84106

Mr. Dale J. Lambert
Attorney for Third-Party
Plaintiff
900 Kearns Building
Salt Lake City, Utah 84101

Exhibit B

PLAINTIFFS
EXHIBIT
C-81-4453

1 IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

2 PATRICIA CHRISTIANSEN,)
3 Plaintiff,)
4 vs.)
5 HOLIDAY RENT-A-CAR, d/b/a)
6 FLEXI-LEASE, INC., and)
7 DEVON K. HAMMER,)
8 Defendants.)
9 _____) SETTLEMENT AGREEMENT
10 HOLIDAY RENT-A-CAR, d/b/a)
11 FLEXI-LEASE, INC.,)
12 Third Party) Civil No. C81-4453
13 Plaintiff,)
14 vs.)
15 HAROLD T. HINCKLEY, and)
16 REX HOWELL, d/b/a AIRPORT)
17 SHUTTLE PARKING,)
18 Third Party)
19 Defendants.)
20 _____)
21 DON MAW and BEVERLY MAW,)
22 Intervening)
23 Plaintiffs,)
24 vs.)
25 DAVID LINGARD, JOHN LINGARD,)
26 and CRAIG LINGARD,)
27 Additional Third-)
28 Party Defendants.)

24
25 Whereas Patricia Christiansen (hereinafter plaintiff) has
26 filed the above captioned case against Holiday Rent-A-Car, dba
27 Flexi-Lease, Inc. and/or Flexi-Lease, Inc. dba Holiday Rent-A-Car
28 (hereinafter Holiday).

29 Whereas Don Maw and Beverly Maw (hereinafter Maws) have filed
30 a Complaint in Intervention against David Lingard, John Lingard,
31 and Craig Lingard (hereinafter Lingards).

32 Whereas Holiday has filed a Third Party Complaint against

1 Harold T. Hinckley and Rex Howell, dba Airport Shuttle Parking
2 (hereinafter Airport Shuttle) and believes that they may have ot
3 claims against insurance companies as a result of the action fil
4 by the plaintiff.

5 Whereas the parties hereto desire to settle their differen
6 amicably.

7 Whereas plaintiff, Holiday, Maws and Lingards acknowledge
8 plaintiff's claim far exceeds the \$15,000 hereafter described in
9 this agreement, and as supported by her affidavit and that of Dr.
10 Robert Baer, the parties are anxious to enter into this settleme
11 on the grounds that the third party defendants and their insurer,
12 Home Insurance Company, have been notified of the case, have been
13 tendered its defense and refused to accept responsibility nor akr
14 ledge insurance coverage and that Holiday, Maws and Lingards have
15 had to pay their own attorney fees and costs and face a judgment
16 covered by insurance or in excess of insurance coverage, and

17 Whereas plaintiff, Holiday, Maws and Lingards acknowledge t
18 settlement agreement is made only because of the dual considerati
19 of the \$15,000 hereinafter described and assignment of all of the
20 claims against third party defendants and Home Insurance Company,
21 and

22 Whereas this agreement shall be only between plaintiff, Holid
23 Maws and Lingards and is not intended as a release to any
24 party or entity and specifically shall not release third party
25 defendants nor Home Insurance Company, and

26 Whereas plaintiff, Holiday, Maws and Lingards agree to subm
27 the issue of plaintiff's damages to the court on evidentiary hear
28 as to the exact amount of general and special damages based upon
29 the following documents which will be offered into the record at
30 such hearing and which are incorporated by reference in the reasc
31 and consideration for this agreement, such being the affidavits o
32 Dr. Robert Baer and plaintiff, and

1 Whereas Holiday, Lingards and Maws, for the purpose of the
2 judicial determination of plaintiff's damages, agree that liability
3 may be found in favor of plaintiff and against Holiday, and

4 Whereas the contents of this agreement have been made known to
5 third party defendants and Home Insurance Company and that third
6 party defendants and Home Insurance Company still refuse to honor
7 their contract and insurance obligations to Holiday,

8 WHEREFORE, in consideration of the covenants and promises
9 made herein, the parties hereto agree as follows:

10 1. The Lingards shall pay to the plaintiff the sum of \$5,000.

11 2. In addition to the \$5,000 sum described in paragraph 1,
12 the Lingards shall pay the sum of \$10,000 into an interest bearing
13 trust or escrow account. If the plaintiff recovers any sum, either
14 through judgment or settlement, from Airport Shuttle or its insurer
15 or South Carolina Insurance Co., then the proceeds of such trust or
16 escrow account shall be returned to the Lingards. If, on the other
17 hand, plaintiff does not recover any sums, either through judgment
18 or settlement, from Airport Shuttle or its insurer or South Carolin
19 Insurance Co., then the proceeds of said escrow or trust account
20 shall be paid to the plaintiff.

21 3. The Lingards and Maws agree to cooperate with the plaintiff
22 and her counsel in pursuing claims against Airport Shuttle, its
23 insurer, and/or South Carolina Insurance Company, including appear-
24 ing and testifying in court. In addition, the counsel of said
25 parties will participate in the above-captioned case and shall pro-
26 secute the third party complaint in the above-captioned case. In
27 the event that future litigation is necessary, at the conclusion of
28 the trial of this case now set for October 6, 1982, Holiday, Lingar
29 and Maws agree to be plaintiffs provided that their fees and costs
30 be met by plaintiff Christiansen.

31 4. Other than those sums set forth in paragraphs one and two,
32 plaintiff agrees not to seek any additional sums, money, property

1 or compensation from Holiday, the Lingards, or the Maws, for dam-
2 ages of any nature, whether now known or unknown, arising from or
3 connected with the accident complained of in plaintiff's complaint
4 and other than those in the assignment between these parties
5 putting plaintiff in the shoes of Holiday, Lingards and Maws con-
6 cerning their rights against third-party defendants and its insur-
7 Home Insurance Company, and South Carolina Insurance Company.
8 Plaintiff agrees not to execute on any other real or personal
9 property of any kind of the Lingards, the Maws and/or Holiday, or
10 to file liens on any such property, or to garnish any wages,
11 income, or accounts of any such parties. In addition, if any liens
12 are filed against any such property as a result of a judgment
13 being obtained against Holiday, the plaintiff agrees to execute
14 documents, as requested by the Maws or the Lingards, to release
15 any such liens.

16 5. The lingards, Maws and Holiday agree to execute the said
17 assignment which is attached hereto, and by reference made a part
18 hereof.

19 6. If any part of this agreement is held unenforceable,
20 the remaining portions will remain in full force and effect.

21 DATED September 30, 1982.

22
23 Patricia Christiansen
24 Patricia Christiansen
25 Plaintiff

26 Samuel King
27 Samuel King
28 Attorney for Plaintiff

29 James E. Hawkes
30 James E. Hawkes
31 Attorney for Plaintiff

32
Dale J. Lambert
Dale J. Lambert
Attorney for defendant Holiday
and additional Third Party
Defendants, Lingards

Gerald E. Nielsen
Gerald Nielsen
Attorney for Intervening plaintiff
Don Maw and Beverly Maw

Exhibit C

THIRD JUDICIAL DISTRICT
County of Salt Lake - State of Utah

Patricia Christiansen
Holiday Rent A Car

FILED

CASE NO: C81-4453

Type of hearing: Div. _____ Annul. _____ Supp. Order _____ OSC _____ Other _____

Present: Pltf _____ Dft _____

P. Atty: Wm King James Haynes

D. Atty: Eric Anderson R.H. Stevens

Sworn & Examined: _____

Pltf: _____ Deft: _____

Others: _____

Summons _____ Stipulation _____

Waiver _____ Publication _____

Default of Pltf/Dft Entered _____

Date: September 22, 1982

Judge: James H. Haynes

Clerk: Debra S. Williams

Reporter: William King

Bailiff: Gene W. Swartz

ORDERS:

- Custody Evaluation Ordered Custody Awarded To _____
- Visitation Rights _____
- Pltf/Dft Awarded Support \$ _____ x _____ = _____ Per Month
- Pltf/Dft Awarded Alimony \$ _____ Per Month/Year Alimony Waived
- Payments to be made through the Clerk's Office: _____
- Atty. fees to the _____ in the amount of _____ Deferred
- Home To: _____
- Furnishings To: _____ Automobile To: _____
- Each Party Awarded their Personal Property
- Pltf/Dft. to Maintain Debts and Obligations
- Pltf/Dft. to Maintain Insurance on Minor Children
- Restraining Order Entered Against _____
- Pltf/Dft. Granted Judgment for Arrearage in the Sum of \$ _____
- 90-Day Waiting Period is Waived
- Divorce Granted To _____ As _____
- Decree To Become Final: Upon Entry 3-Month Interlocutory
- Former Name of _____ ts Restored
- Based on the failure of Deft to appear in response to an order of the court and on motion of Pltf's counsel, court orders _____ / _____ shall issue for Deft. Returnable _____ Bail _____
- Based on written stipulation of respective counsel/motion of Plaintiff's counsel, and good cause appearing therefor, court orders the above case be and the same is hereby dismissed without prejudice.
- Based on court's own motion Based upon replicated order signed by Judge Cross this court feels that it cannot enter judgment nor hear any matter on Pltf's complaint at this time. The issues on negligence of deft, approx. cause, extent of injuries will have to be heard at trial.

Exhibit D

JUDGE'S RULING

THE COURT: In the first place, it is perfectly clear that one district court judge cannot overrule another one. And the only issue that was before me was the question of continuance and bifurcation. I ruled that the case should be bifurcated and the question of liability as between all of the parties involved in this lawsuit, and that includes the Maws and the Lingards at this point should be resolved before the question of damages is decided. That is my ruling.

And that the bifurcated case for the question and the determination of the liability issues, not the liability to the plaintiff, but the liability issues as between the other parties to the lawsuit, is determined by a trial on the day set for trial. I don't think the plaintiff need to get involved in that. It is not for the question of liability of anybody to the plaintiff that is to be tried, but the question of among these other parties, if anyone is liable to the plaintiff, who is it? And then that person or that party or parties determined to be liable would be involved in the trial of the case concerning the question of damages.

MR. KING: And in regards to the plaintiff's right to settle now with the defendant, if they both choose.

THE COURT: I think that you have a right to settle with the defendant but not on the basis that you are going to settle with the defendant and have Judge Fishler conduct an evidentiary hearing and fix the amount of general and special damages that you are settling on. If you are going to settle the case, settle it. Don't go over there and say, "Judge, we want you to hear the evidence and determine what general and special damages we are entitled to recover."

MR. KING: That is an issue before. This is your strong feeling of opinion. That issue is not before you; is that correct?

THE COURT: I would say that is a fair statement, Mr. King. I am not telling him that he can't do what he wants to do. I may not agree with what he does, but he has got the same jurisdiction and the same authority I do and I am not entering any injunction against him doing it. I just don't think he should do it.

MR. KING: Apparently the honest disagreement between judges, you view the parties interested in plaintiff's claim as being all the parties in the lawsuit and Judge Fishler has viewed them as interested in

Plaintiff's complaint by virtue of their pleadings.

THE COURT: Well, that it up to him. If he does what he does and Mr. Stevens doesn't agree with it, I guess he has got a right to appeal. He can't come over here and say, "Judge Croft, I want you to overrule Judge Fishler.

MR. KING: Finally, I would ask that the order you sign on bifurcation have to complaint -- the word "complaint" in the last paragraph, the third party complaint, be amended to be "third party complaints" because there is more than one third party pleadings and the last sentence be stricken, as it can be interpreted as to Judge Fishler to prevent him from accepting same.

THE COURT: Mr. Stevens.

MR. STEVENS: Your Honor, in listening to the discussion, the thing that strikes me about the bifurcation order is that really I had it written correctly. Your order was trial be separated. Your order was the trial of contract issue. The liability issues go first and if needed a trial of the ~~****~~ damages issues would come second. As I have heard the discussion, I think the last sentence should be there. I think what is contemplated in front of Judge Fishler is the trial of the damage issue which would be contrary to this order.

THE COURT: That is the impression I get, that that is what they had in mind doing.

MR. KING: Exactly right. a Submission of the damage issues so these parties could settle and protect themselves from liability they cannot beat.

THE COURT: I/^{don't} really see that the changing the last sentence is necessary. I certainly think that it ought to be made clear that the issue of liability in both the third party complaint and the complaint of intervention are to be resolved on the fifth if any part of it is not settled by stipulation before that. I think the Maws and the Lingards can settle their dispute on liability. They are not names as defendants or third party defendants in the case and they are in it on their own and I think they can probably stipulate themselves out of it. But if they remain in, then the question of liability is between the intervenor plaintiffs and their defendants out to be resolves at the trial on the question of liability.

Certainly by bifurcating the case, it was my intention the question of liability should be resolved first before the question of anybody's liability to the plaintiff and the damages she might be entitled to recover is in fact tried. You can always go in and settle the case, but I am disturbed about what appears to me to be an effort to work out a settlement to the exclusion of the third party defendants. I will make the word "complaints," plural, and both places the third party complaints -- I don't know whether that is third party complaint or complaint in intervention. It is not a third party complaint

MR. KING: How about third party pleadings, Your Honor?

THE COURT: Make it a third party complaint and complaint in intervention.

MR. NIELSON: What may be happening here, I have a trial imposed upon me next Tuesday that we settled, agreed to settle.

THE COURT: Settle it and with the parties that you represent, the Maws, don't you?

MR. NIELSON: Yes, Your Honor, and I have never had notice for bifurcation in this matter.

THE COURT: Well, if you had been at the hearing yesterday --

MR. NIELSON: I am not complaining about anything that was decided at the hearing yesterday that I had notice of, Your Honor.

THE COURT: Well, you weren't here.

MR. KING: If he had had notice they were going to bifurcate, he might have changed his other court calender.

MR. NIELSON: I am not in trouble if I am still able to effect that settlement, but if I can't, I am not ready to try this case Tuesday.

THE COURT: Well, you were in the case set for trial on Tuesday. The request for continuance was presented to this Court and I denied it.

MR. KING: If I might, Your Honor, I don't think there is a problem here. I think the Court has said if the Lingards want to settle with the Maws and between themselves, you are not opposed to that.

VOICE: I would suggest you settle now on the record and be done

MR. LAMBERT: We have a settlement. I don't know what the problem is. I don't know what your concern is.

THE COURT: Before Tuesday, before the trial, if this case goes to trial on Tuesday, the intervening plaintiffs and their defendants can file a written stipulation dismissing them out of the lawsuit and

and you won't be fixed with any trial. But if you are not willing to stipulate yourselves out, then you are before the court for trial and the trial of the issue is limited to the question of who is liable to who. Not who is liable to the plaintiff, but who among the defendants, the third party defendants. The intervening plaintiffs and the defendants in the complaint in intervention, who are they liable to.

MR. NIELSON: Your Honor, I spoke prematurely. I withdraw my objection. I can live with that.

MR. KING: The Court is allowing you to go ahead and make your settlement, Jerry.

THE COURT: This is what I have written, gentlemen: "It is hereby ordered that the trial of the third party complaint and the complaint in intervention herein ~~and~~ shall be bifurcated and conducted separately from the trial of the underlying complaint for personal injury and damages. The trial of those issues raised by the third party complaint and complaint in intervention will be conducted commencing October 5, 1982 at 10 o'clock a.m., the above-entitled case if a judge is available. The issues therein to be tried are the issues of liability as between all parties except to the plaintiff. The word "to" shall go to. To the plaintiff. It should be "to the plaintiff. Those issues raised by the plaintiff's complaint herein are reserved for trial at a subsequent date to be set by the Court and the trial, if a trial upon them is necessary."

Now, if you want to go before Judge Fishler and he wants to do anything in this case, that is up to him.

MR. KING: Your Honor, I do wish you would ad after "if necessary," "unless otherwise disposed of" because he thinks you have tied his hand, and apparently in what you have said that was not your intention.

THE COURT: No, I think I will leave it this way; otherwise, if a trial upon them is necessary. Those issues raised by the plaintiff complaint are to be reserved by a trial to be set at a later date, if a trial is necessary. If a trial isn't necessary, there be no trial setting at a later date. It seems to me that is all it amounts to.

MR. KING: I think that covers it nicely, Your Honor. Thank you. I appreciate your patience this afternoon.

THE COURT: And as one parting statement, I will say it is not my intent to tell, to make any ruling that Judge Fishler can't do anything that he chooses to do. But I certainly don't think that he should take it upon himself to make a determination himself on the question of damages. I guess as Mr. Stevens as the third party defendant in the case is entitled to have that issue decided by a jury.

MR. KING: Certainly he has exactly the same right^{to}/participate as the plaintiff, has to participate in the third party pleadings. He is not in ours and we are not in his.

* * * * *

Exhibit E

FILMED

THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE - STATE OF UTAH

FILE NO. 081-4453

TITLE: (✓ PARTIES PRESENT) : COUNSEL: (✓ COUNSEL PRESENT)

Patricia Christianesen : Samuel King ✓ James Hawks ✓

VS. :

Holiday Rent-A-Car et al : Dale Lambert ✓ Gerald Nielsen ✓

: Robert Stevens ✓

Evelyn Thompson CLERK

Gene Unsworth REPORTER

BAILIFF

HON. Philip R. Fisher JUDGE

DATE: October 1, 1982

This hearing came on regularly before the Court, Counsel and Court meeting in Chamber 1. Now the Court being fully advised grants plff's motion to Withdraw exhibits P-1 through 4. they are to be made part of the file. Judgment granted in favor of the plaintiff and against Holiday Rent-A-Car.

Exhibit F

JUDGMENT

SAMUEL KING
JAMES E. HAWKES
Attorneys for Plaintiff
301 Gump & Ayers Bldg.
2120 South 1300 East
Salt Lake City, Utah 84106
486-3751

FILMED

RECEIVED
CLERK OF DISTRICT COURT
SALT LAKE COUNTY, UTAH

Oct 1, 1982

W. J. Johnson
Clerk of District Court
Salt Lake County, Utah

IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

PATRICIA CHRISTIANSEN,)
Plaintiff,)

vs.)

J U D G M E N T

HOLIDAY RENT-A-CAR, d/b/a)
FLEXI-LEASE, INC., and)
DEVON K. HAMMER,)

Defendants.)

Civil No. C81-4453

HOLIDAY RENT-A-CAR, d/b/a)
FLEXI-LEASE, INC.,)

Third Party)
Plaintiff,)

Bl. 173 NO. 1897
10-4-82 - 8:05
AM.

vs.)

HAROLD T. HINCKLEY, and)
REX HOWELL, d/b/a AIRPORT)
SHUTTLE PARKING,)

Third Party)
Defendants.)

DON MAW and BEVERLY MAW,)

Intervening)
Plaintiffs,)

vs.)

DAVID LINGARD, JOHN LINGARD)
and CRAIG LINGARD,)

Additional Third-)
Party Defendants.)

The plaintiff's motion for judgment having come before the above-entitled Court on the 30th day of September, 1982, at the hours of 9:00 A. M. and 1:30 P. M., and on the 1st day of October, 1982, at 1:30 P. M., the plaintiff Pat Christiansen was present and represented by her attorneys, Samuel King and James E. Hawkes; Robert Stevens, attorney for Airport Shuttle Parking; Dale J. Lambert, attorney for defendant Holiday and additional third-party defendants, Lingards; and Gerald Nielsen, attorney for

1 intervening plaintiffs, Don Maw and Beverly Maw, were also present
2 Dr. Robert Baer was present as a witness for the plaintiff. The
3 purpose of the hearings is to enter a settlement and have the
4 court determine damages. Third party defendant, Airport Shuttle
5 Parking, through its attorney Robert Stevens, objected to the
6 hearings. ~~The court determined that his client, third party~~
7 ~~defendant had no standing to object as it acknowledged defense of~~
8 ~~plaintiff's claim had been tendered to it and rejected by it, and~~
9 ~~that it had in its answer, no pleading as allowed pursuant to~~
10 ~~Rule 14(a), Utah Rules of Civil Procedure, which plaintiff had to~~
11 ~~respond, nor was it interested in the controversy between plaintiff~~
12 ~~and defendant.~~ The court also finds that it is in the interest of
13 proper civil procedure, and the right of parties, to settle. The
14 court declines though to participate in the dollar and cent deter-
15 mination of plaintiff's damages.

16 Plaintiff, defendant Holiday, plaintiffs in intervention,
17 Maw and additional third-party defendants, Lingard, having stipu-
18 lated through their attorneys that judgment on plaintiff's claim
19 against Holiday could be entered for plaintiff and against Holiday
20 and plaintiff having requested and moved for entry of judgment in
21 the sum of \$ 27,160.65 special damages and \$ 211,584.50
22 general damages and the said other parties having agreed that there
23 was a rational basis in support of those figures as being repre-
24 sentative of plaintiff's losses, and over the objection of the
25 third-party defendants, Hinckley and Howell d/b/a Airport Shuttle
26 Parking,

27 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:


28 1. Plaintiff is given judgment against Holiday Rent-A-Car
29 in the sum of \$ 27,160.65 special damages, and \$ 211,584.50
30 general damages together with interest on the special damages from
31 February 29, 1980, the date of plaintiff's accident, in the sum of
32 \$ 3,287.93 for a total judgment of \$ 246,033.00

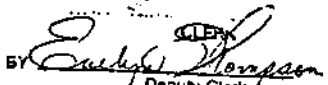
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2. Plaintiff is entitled to her costs against defendants.

3. The Settlement Agreement between plaintiff and the said parties is approved.

DATED October 1, 1982.


JUDGE PHILIP R. FISHLER
Attest

BY 
Deputy Clerk