

1967

## Intermountain Association of Credit Men v. F. C. Watterson et al. : Respondent's Brief

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IN THE SUPREME COURT

OF THE STATE OF UTAH

UNIVERSITY OF UTAH

MAY 18 1967

INTER MOUNTAIN ASSOCIATION  
OF CREDIT MEN,

LAW LIBRARY

Plaintiff and Respondent

vs.

No.  
10760

F. C. WATTERSON et al,

Defendant and Appellant

RESPONDENT'S BRIEF

Appeal from the Judgment of the Third District Court  
in and for Salt Lake County, Utah, against Defen-  
dant F. C. Watterson  
Honorable Joseph G. Jeppson, Judge'

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IN THE DISTRICT COURT  
OF THE STATE OF IOWA

---

INTERNATIONAL ASSOCIATION  
OF CREDIT MEN,

Plaintiff and Respondent

vs.

No.  
10750

A. C. WATTERSON, et al.,

Defendant and Appellant

---

RESPONDENT'S BRIEF

---

STATEMENT OF THE KIND OF CASE

This is a case wherein the Plaintiff sues upon  
an account for goods sold and delivered to an all-  
eged partner, his for advance cost.

DISPOSITION IN LOWER COURT

The Honorable Justice Joseph C. Jeppson, Dis-  
tinguished, sitting without jury found in favor of

**Plaintiff-Respondent against the Defendant-Appellant, F.C. Watterson as prayed (the Defendant Rolphe Griffiths had earlier filed bankruptcy)**

### **RELIEF SOUGHT ON APPEAL**

**The Plaintiff-Respondent seeks to have the Judgment of the trial Court affirmed.**

### **STATEMENT OF FACTS**

**The Appellant has cited controverted testimony which is favorable only to his position as fact contrary to Court rules. As a result of this Appellants statement of facts is misleading and consequently the Respondent offers the following statement of facts:**

**The Plaintiff commenced an action in the District Court for Salt Lake County on May 9, 1962 upon an earlier Idaho Judgment. This case was entitled Civil No. 136508. After this action was commenced it was discovered that the service upon Mr. Watterson was not proper and**

the Judgment entered by the Idaho Court was invalid. Consequently the instant case was commenced upon the theory of contract between the assignors of Plaintiff and the Silver Creek General Store, a Partnership, for goods sold and delivered. Defendant moved to dismiss this latter action. The Plaintiff then moved to dismiss its own first action based upon the Idaho Judgment and both cases were heard at the same time. Judge Aldon J. Anderson dismissed the prior action and allowed the instant case to proceed.

At Pre-trial of this matter, Judge Hanson dismissed Plaintiff's complaint upon the grounds of res Judicata. Upon motion of the Plaintiff the matter was re-heard and the parties submitted memorandums. Judge Hanson reversed his earlier ruling and ordered the case to proceed to trial.

At the trial, there was substantial evidence that the Defendant F.C. Watterson joined with his son-in-law in a partnership known as Silver Creek General Store, (R 34,35) That they applied for credit to Salt Lake Hardware (R 34); that credit was extended (R 40); that goods were supplied to the partnership; Several documents introduced and received into evidence show the existence of partnership between the two ( Exhibits 1, 2,3,4,20) and that there was unpaid the amount that was ultimately reduced to Judgment ( Exhibit 4)

The Defendant and his witnesses ( his wife, his daughter, and his son-in-law) offered much testimony in conflict with that offered by the Plaintiff, but it is interesting that much of the actual evidence of the partnership was elicited by cross examination from the Defendants witnesses and there are many conflicts within their testimony as will be further pointed out in Argument # 2.



Judge Jeppson found that there was a partnership, that there had been goods sold and delivered to the partnership in the amounts prayed; and that the accounts had been duly assigned . After the evidence, Mr. Alston moved the Court among other things, to dismiss upon the grounds of res judicata. This motion along with others was denied and judgment was accordingly entered.

It is from this judgment that Defendant appeals.

## ARGUMENT

**POINT 1. THE DOCTRINE OF " RES JUDICATA" IS INAPPLICABLE TO THIS CASE AND THE COURT RULED CORRECTLY IN DENYING DEFENDANT'S MOTION TO DISMISS.**

The Appellant makes several references in his brief to generalized statements from American Jurisprudence in support of his argument that the doctrine of " res judicata" is applicable to the facts of this case. The difficulty with this approach is the almost futile attempt to apply generalized encyclopedic law to a specific set of facts, which nearly always leads to an erroneous conclusion. Appellant makes reference, on Page 8 of his brief to a quotation from 30A Am.Jur., Judgments, Sec. 376, P. 373 ( which should be Sec. 326, P. 374) which states:

" ... the doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity has litigated, or had an opportunity to

litigate, the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harrassment and vexation of his opponent."

The really significant point here is whether or not the issues, matter or cause of action set forth in Civil No. 136509 and Civil No. 145459 were the same and whether or not there was any element of harrassment and vexation, and further, the significance of the Court's reason for dismissing the earlier action.

The application of this doctrine is limited to subsequent cases in which not only the same parties and subject matter appear, but also the same cause of action demand, or claim and where the issues involved are the same as in the prior case. When the issue, claim, demand, or cause of action is different, the general rule is that the doctrine of res judicata will not apply to bar the subsequent action.

The earlier action, Civil No. 136508 was an action based solely on an Idaho judgment, which subsequent to suit, was found by the Respondent to be wholly void for lack of jurisdiction. There had never been any hearing whatsoever on the merits of the case, either in Idaho or in Utah, and it was only after the invalidity of the Idaho judgment had been brought to the attention of Respondent's counsel that a new action, Civil No. 145459 was commenced to decide the merits of the case in a Court of competent jurisdiction.

In the two cases in question, there are really no common questions of fact, no common issues and certainly not the same cause of action, demand or claim. The first action only required proof of a valid Idaho judgment. There could be no inquiry as to the merits of the case itself, but only as to the effectiveness and validity of the judgment. In the second case, however, the issues were much different. There they turned around proof of an

agreement, performance of the terms of that agreement, agency, partnership, breach of agreement, etc. We submit that the cases decided in this State and else where have held the doctrine of res judicata inapplicable in similar situations.

Some of the Utah cases dealing with this problem are cited on Page 12 of Appellant's Brief, but a careful reading of these cases will lead to the conclusion that these cases are in support of Respondent's position, not the Appellant's.

In the case of Ray vs. Consolidated Freightways, 4 Utah 2nd, 137, 289 P2nd 197, the Court quoted from a United States Supreme Court case wherein Justice Field stated:

" But where a second action between the same parties is upon a different claim or demand, the Judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the findings or verdict was rendered. In all cases therefore, where it is sought to apply the estoppel of a judgment rendered upon one

causes of action, to matters arising in a suit upon a different cause of action, the inquiry must always be to the point or question actually litigated and determined. Only upon such matters is the judgment conclusive in another action."  
Cromwell vs. Sacramento County 24 US 351, 24 L.Ed. 195 (Emphasis added)

In determining whether there are two separate issues, or causes of action, a test is set forth in 30 A Am. Jur.; Judgments, Sec. 368;

"... If, however, the two actions rest upon different states of facts, or if different proofs would be required to sustain the two actions, a judgment in one is no bar to the maintenance of the other. It has been said that this method is the best and most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties and it has even been designated as infallible."

In 30 A Am. Jur. Judgments, Section 349, it is stated further:

"The doctrine of res judicata is not available as a bar to a subsequent action if the judgment in the former action was rendered because of a misconception of the remedy available ... The general rule is that a judgment against a Plaintiff in an action on an express contract because of a failure to prove the contract, or because the contract was unenforceable, is

not a bar to a subsequent action on the theory of quantum merit. Also, one who erroneously files an action on a quantum merit theory may not be precluded from maintaining an action on the theory of an express contract ..."

The Utah Code held in the case of *Dorset v. Morse* 103 P. 969, 36 Utah 362, that a pending action for goods sold and delivered did not preclude another action brought to foreclose a Mechanics Lien.

In the case of *Pemberton v. LaDeau*, 224 SW 2nd 363, 359 Mo. 907, Plaintiff brought one action on the Doctrine of quantum merit and failed and subsequently an action was brought alleging an express contract and the doctrine of res judicata was raised as a defense. The Court held that there were two separate and distinct causes of action and that res judicata was not available as a bar to the subsequent action. In the Utah case of *Glen Allen Mining Co. v. Park Galena*, 296 P 231 (1931) 77 Utah 362, a mortgagor brought suit

in the first action to set aside a sheriff's sale upon the grounds that the mortgagor's officer had purchased the property in his own name rather than in trust and the action to set aside the sheriff's sale failed. In a second action the mortgagor brought an action to declare the property to be held in trust for mortgagor and the issue of res judicata was raised. In that case, the Court held that res judicata was not a bar to the subsequent action, inasmuch as the same questions were not presented.

Also in point is the case of East Millicreek Water Company vs. Salt Lake City 108 Utah 315, 159 P 2d 863 (1945) the Plaintiff brought two successive actions sounding in declaratory judgment. The first action asked for the construction of certain provisions of the contract and later an action was brought to construe other provisions of the contract and the issue of res judicata was raised. The Court said :



"This contention overlooks the fact that there are two kinds of cases where the doctrine of res judicata is applied"

The quote went on to discuss the fact that res judicata applies if the claim, demand, or cause of action is the same and then stated:

" On the other hand, where the claim, demand or cause of action is different in the two cases then the former is res judicata only to the extent that the former actually raised and decided the same points and issues which are raised in the latter cases cited: "

In State vs. California Packing Co., 105 Utah 191, 145 P2d 784, the Utah Court was confronted with the effect of a dismissal of the Plaintiff's complaint with prejudice where the lower court had sustained a demurrer to Plaintiff's amended complaint and Plaintiff refused to plead further and a new action was filed. Our Court stated:

"The dismissal of Plaintiff's action although with prejudice, does not bar Plaintiff from maintaining another action against the Defendant based on the same facts alleged on the original complaint providing the new complaint supplies new and additional facts so that the

new complaint alleges different facts and states a cause of action. The dismissal of the action is with prejudice only to the extent that it determined once and for all that the complaint attacked by demurrer did not state facts sufficient to constitute a cause of action and bars the maintenance of a new action on the same facts which were alleged in the complaint which was dismissed." And also where ... "The complaint failed to allege some essential fact necessary to constitute a cause of action and another action is commenced wherein the essential allegation omitted in the first cause of action is fully supplied in the second, the judgment in the first cause of action is no bar to the second even though both suits were brought to enforce the same right and the Plaintiff in the first cause of action might have amended his complaint to include the omitted essential allegation. This for the reason that the merits of the cause as shown in the complaint in the 2nd action were not passed on in the first."

The reasons for the dismissal of the earlier case, Civil No. 136508, become particularly significant in light of the rationale set forth in 30 A Am. Jur. Judgments, Sec. 374, P 421, as follows:

**" As far as subsequent proceedings under a different cause of action are concerned, the doctrine of res judicata is held not to apply to issues raised in the previous case which were not passed on by the court or jury in deciding it ... Also, a judgment is not res judicata as to any matters which a court expressly refused to determine and which is directed should be litigated in another forum or in another action."**

**The authority cited in support of the last part of the foregoing quotation is the Utah case of Todara v. Gardner, 3 Utah 2nd 404, 285 P2nd 839.**

**The only issue that was ever before the Court in the earlier case, Civil No. 136508, was the validity of the Idaho judgment upon which suit was brought. After the facts became known, Respondent's counsel stipulated that the Idaho judgment was void for lack of jurisdiction and the lower court thereupon dismissed Civil No. 136508 and allowed the Respondent to proceed with Civil No. 145459. Both motions were held by the Court at the same time and thus the Court was fully advised in the premises.**

**Appellant sets forth on pages 11-12 of his brief**

what purports to be a quotation from 30 A Am. Jur. Judgments, Sec. 363. Actually, the quotation is taken from Section 372 and part of 373 but the Appellant failed to indicate the omitted portions of the quotation by the use of Ellipses and consequently, the quotation as it reads in Appellants brief, is misleading. For clarification, Sec. 372 and 373 are set forth hereafter with the omitted portions underlined:

**Sec. 373**

" The phase of the doctrine of res judicata precluding subsequent litigation of the same cause of action is much broader in its application than a determination of the questions involved in the prior action; the conclusiveness of the judgment in such a case extends not only to matters actually determined, but also to other matters which could properly have been determined in the prior action. This rule applies to every question falling within the purview of the original action, in respect to matters of both claim and defense which could have been presented by the exercise of due diligence."

**Sec. 373:**

" The rule granting conclusiveness to a judgment in regard to issues of fact which

could properly have been determined in the action is generally limited to cases involving the same cause of action. Where a second action is upon a different claim, demand or cause of action, the established rule is that the judgment in the first action operates as an estoppel only as to the points or questions actually litigated and determined and not as to matters not litigated in the former action, even though such matters might properly have been determined therein. Accordingly, the view is generally taken that before the doctrine of res judicata is applied in such cases, it should appear that the precise question involved in the subsequent action was determined in the former action. These rules prevail whether the judgment is used in pleading as a technical estoppel or is relied on by way of evidence as conclusive per se.

Although the general rule, that a judgment in a former action does not operate as an estoppel as to matters not litigated in the former action where the second action is on a different claim or cause, has appeared to have been literally applied in some cases, other cases have appeared to qualify the rule with respect to matters or questions within the particular issues adjudicated in the prior action. Thus, there is authority that even where the causes of action are different, the prior determination of a litigated issue is conclusive in a subsequent suit not only as to the issue itself, but also as to every matter that might have been argued for or against the issue in its determination ..."

An examination of Lectures 15, 17 and 18 to Sec. 375 will reveal that the Utah cases cited by Appellant in support of the foregoing law pertain to the omitted portions of the quotation and not to that portion quoted by Appellant which is actually a minority view, and at best, "a view limited," to matters or questions within the particular issues adjudicated."

It should be obvious that there has never been any harassment or vexation of the defendant and that only in the instant case has there ever been a consideration of the merits of the case. Certainly, great care should be taken to see that all cases are heard upon their merits and once heard, those issues should not again be brought before the Court. There is no doubt that the action of the Court in dismissing the first complaint was depositive and conclusive of the issue therein involved, i.e., the

validity of the judgment which was seen upon,  
but the ruling law which is cited and under  
any application of fairness and justice it cannot  
be said that this statement is in any way binding  
as to the different and independent issues contained  
in the instant case.

POINT II. THERE IS ABUNDANT CLEAR AND CONVINCING EVIDENCE IN THE RECORD FROM WHICH THE TRIAL COURT COULD HAVE AND DID PROPERLY FIND THAT A PARTNERSHIP DID EXIST AND THAT THE DEFENDANT F. C. WATTERSON WAS LIABLE AS PRAYED.

A reading of the transcript of the trial in this case will satisfy the Court that the District Court has ample evidence upon which to base its decision. The following evidence of partnership was introduced at the trial:

1. The Plaintiff's witness Mr. Reese testified that the initial contact with the Defendant came in the office of Salt Lake Hardware, where the Defendant came and asked for credit ( R 34) at which time Mr. Griffiths and Mr. Watterson stated they were a partnership ( R 35, R 46) and at which time the partnership gave information for a financial statement ( Exhibit 1) which states that Mr. Watterson and Mr. Griffiths to be partners



and contains itemization of property owned by each of the. Mr. Reese further testified that the account was initially set up in the name of Mr. Griffiths and Mr. Watterson upon the records of the Plaintiff's assignor Salt Lake Hardware ( 40, Exhibit 4) Mr. reese testified as to the sale and delivery of the goods, the resulting problems and the unpaid balance of the account.

## 2. FINANCIAL STATEMENT #1 (Exhibit 1)

It was uncontroverted that this document was filled out in the office of Salt Lake Hardware by Mr. Reese and then passed to Mr. Griffiths for signature ( R 35) The exhibit speaks for itself and shows that the business of Silver Creek General Store was a partnership and the partners were "Rolphe Griffiths and Chase Watterson" the back-side of this statement also shows assets belonging to both partners.

### **3. FINANCIAL STATEMENT # 2 (Exhibit 2)**

Mrs. Griffiths who was called as a witness by the Defendant flatly denied that her father was ever a partner; that she had filed out Exhibit # 2 ( R 96)

This exhibit unquestionably shows that Mr. Watterson was a partner. On cross examination ( R 156) the following took place:

Q. ( Mr. Henriksen) When you read this line on Exhibit No. 2 you understand what it means, don't you? " State whether corporation, partnership or private enterprise" You understand what this means?

A. ( Mrs. Griffiths) Yes

Q. And then it says " If corporation or partnership, give officers names" You understand what that means don't you?

A. Yes

Q. And then you wrote, in your own hand writing, " F.C. Watterson and Rolfe Griffiths" did't you?

A. Yes

It should be noted that Exhibit # 2 refers to ownership of a Bank Account which later testimony showed was in the name of both Mr. Griffiths and Mr. Watterson (R96). The exhibit on the back also

gives a resume of credit references for each of the partners individually and one of Sears and Roebuck for "Watterson and Griffiths" and under remarks a short business history is given for each of the partners.

4. THE DUN AND BRADSTREET'S REPORTS: A Dun and Bradstreet employee testified that usual procedure for obtaining financial statements from businesses to be distributed to creditors was to send to the business a form which the owner of the business would complete, sign and mail into the company whereupon the original would be typed over for use and perpetuated by photo copy to the various creditors (R 70, 71, 72) The original is then filed for a period and then destroyed. The testimony showed the original of Exhibit 3 in this case had been destroyed (R 70)

The material supplied by Dun and Bradstreet showed Mr. Watterson to be a partner and the copy of the financial information showed that the original had been signed "May 25, 1904 Silver Creek General Store by F.C. Watterson, partner" The only clue in the records as to the origin of the original information is found upon the examination of Mrs. Griffiths (R 181) which went as follows:

- Q. "They (Dun and Bradstreet) sent out a form to fill out for your assets."
- Q. Did you keep a copy of that form?"
- A. No.
- Q. Did you fill the form out?"
- A. I am not sure it could have been filled out by Dad; if it came in when he was doing the books he would have filled it out.

The record indicates that during the operation of the business Mr. Watterson was keeping all of the books and records for a long period of time (R170) (R172)

#### STATEMENT OF AFFAIRS (Exhibit 20)

Mr. Watterson or his son attests his son-  
in-law (Mr. Howard Watter) who after the bus-

iness had failed in Idaho came to Salt Lake City and filed bankruptcy. On direct examination, Mr. Griffiths flatly denied any partnership with Watterson at any time ( R 91 ) But on cross examination he testified as follows ( R 17 )

Q. ( Mr. Murdock ) Do I understand your testimony to be that you are not and were not at any time a partner with F. Chase Watterson.

A. That is right.

Q. I will show you what has been marked Exhibit 20, is that your signature attached to that document" ( Bankruptcy Statement of Affairs)

A. Yes

Mr. Griffiths admitted signing the Statement of Affairs under oath and then was asked:

Q. ( Mr. Murdock ) No. 2 C of the form states: " Have you been in partnership with anyone, or engaged in any business during the six years preceeding the filing of the original petition."

And to the right of that the answer is contained:

"Business, Rolph's Market, Santiquin, Utah, 1959 to 1965, Silver Creek General Store, Pocatello, Idaho from May 1960 to May 16, 1961. This was a partnership with Francis Chase Watterson."

( Discussion)

Q. Did you sign that document?

A. Yes.

A. JOINT BANK ACCOUNT. The discussion then turned to the existence of a joint bank account ( P 89)

Q. Mr. Griffiths, is it true-it is true isn't it, Mr. Watterson was on a bank account with you in Halley, Idaho?

A. No.

After again being shown his signature on the statement of affairs he admitted the existence of a joint bank account ( P 91); see Item # 4 on Exhibit 25.

Later testimony shows that not until Mr. Watterson decided to leave Pico and return to Utah, was his daughter's name placed on the account ( P 150)

7. INVOLVEMENT IN THE MANAGEMENT OF THE BUSINESS. The record shows that Mr. Watterson moved to Pico and managed the hardware portion of the store; paid bills, kept the books, placed orders for merchandise and wrote checks on the bank account. ( P 93)

8. CASH INVESTMENT: Mr. Watterson had a cash investment in the business and although there was some conflict as to exactly how much it was and when it came, the answer was generally \$ 3,000.00 ( R 117) The Defendant and his family testified that this was really a loan; however, the two financial statements in evidence show no such information nor is there a corresponding entry on Exhibit # 2 under " Liabilities" the blank calling for " owing to friends, relatives and others for borrowed money" is filled in with " none"

Although the Defendant had earlier stated under oath that he

" ... assisted without being out on the payroll or drawing any salary, but merely as a kindly gesture to aid and assist a daughter and son-in-law who owned and operated the store" ( R 113)

He later testified under cross examination that he received \$400.00 per month in merchandise (110) and his daughter testified that he was paid money





Further testimony will be recorded in the record.

The Defendant was all in the witness stand when  
a United States Marshal came in and told them  
that out on the West side in the office of  
J. H. Lake Hardware and the reason they all remem-  
bered is well was that Mr. Johnston was home  
taking care of the books and lambing the sheep.  
On cross-examination of Mr. Griffiths, the follow-  
ing took place: (S 106)

- Q. (Mr. Griffiths) But all this livestock  
had been sold then, before you talked  
to Mr. Johnston?
- A. Yes.

The Defendant on examination testified (S 107)

- Q. Can you tell us where you were on that  
afternoon (3-21-80)?
- A. In Pigeon, Idaho.
- Q. What were you doing?
- A. I was lambing some sheep, and also take  
ing care of the mill work.
- Q. How do you identify this particular  
man in this photo?
- A. Because we started lambing the  
sheep on the 21st of March and I  
was at the time of March
- Q. The 21st of March?

A. That is right

On cross examination relating to the same subject, Mrs. Griffiths testified: (R 156)

Q. ( Mr. Henriksen) But all this live-stock had been sold then, before you talked to Mr. Reese? ( on March 21st 1960)

A. ( Mrs. Griffiths) Yes

Q. All of the sheep had been sold?

A. Yes

On cross examination of Mr. Mattarson, he testified: ( R 154)

THE COURT: It sounds like you knew they were already sold.

Q. ( Mr. Henriksen) When you sold them did you deliver possession at once?

A. Yes, they were took at once.

Q. So, if already sold, you could not have been there in March 21st, 1960 looking, could you?

A. Not if already sold.

There were also many inconsistencies regarding the value of the ranch and the amounts received in connection with that transaction.

Appellant's contention that the lower Court erred in granting Judgment without requiring part-

necessarily stopped if it is especially is wholly without merit, even as objection is only in passing. Appellant's counsel has specifically pointed out Page 1 in support of the contention that the objection was timely. As to the objection of our new Utah Rules of Civil Procedure. It is respectfully submitted that under the new rules, it would be necessary to 'specifically plead' partnership by stating it as such if there was the only theory relied upon. Here, however, the Court made no such ruling, and in fact its decision was based upon partnership generally, or by 'stop and transfer' to the issues of this appeal. Furthermore, GRS Entoyment, Sec. 153 (3) states:

"...the failure to plead a stop is waived by proceeding with the trial of the case without objection."

We submit the foregoing would nullify Appellant's contention even if it were material.

In summary, the Court was before it reliable evidence (1) the Mr. Peterson had expressly

that the responsibility to review the account of offering  
that first to the company and then to the board (10)  
thereafter the board was to review (11) that he at no  
time called (12) that he reviewed with a view to  
with Griffiths and made marks on the account and  
there (13) that he was on a joint bank account  
which that he had reviewed even for the pur-  
tion of the store, created memorandum, kept the  
it (14) that since that time he had not reviewed a por-  
which has to be the correct one although he denied  
it as a partner, the only logical source of  
report would be from the director showing with-  
that showing relation to be a partner (15) a  
office of the defendant (16) made long prior to the  
partnership (17) a correct statement of Griffiths (18)  
signed by Griffiths and the company as a  
financial statement made out of the books and  
used showing a balance of \$100,000 (19) a  
statement, made out of the books and the finan-  
representation made to be a partner (20) a financial

property. With this guidance the Court properly found that there was a partnership and concluded that the Defendant was liable on the account and the trial Court being seen in the best position to view the facts and sift through the controverted testimony should not be reversed unless its decision is arbitrary or unreasonable. After reviewing the evidence in this case there can be no question that the judgment of the Trial Court was fully supported, justified and warranted.

#### **SUMMARY**

In view of the foregoing, we submit that Plaintiff's claim was not barred by the Doctrine of Res Judicata and that there was ample evidence to support the judgment of the Trial Court.

**Respectfully Submitted,**

**HENRIKSEN, MURDOCK & SUMMISON**