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GENEINNE ELLEN DAVIS, Petitioner/Appellant, Lewis Ray Davis, Decedent, v. Utah Labor Commission, AIR SYSTEMS INC., and ACUITY, A MUTUAL INSURANCE CO., Respondents/Appellees : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

GENEINNE ELLEN DAVIS, Petitioner/Appellant, Lewis Ray Davis, Decedent, v. **Utah Labor Commission, AIR SYSTEMS INC., and ACUITY, A MUTUAL INSURANCE CO.,** Respondents/Appellees	Appeal No.: 20161081 - CA Agency Case No.: 15-0654

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ARGUMENT

In the Brief of Appellees, Air Systems argues that the circumstances of this case does not rise to the level of a special errand exception to the going and coming rule (see pp. 5-6 of the Brief of Appellees) or the special hazards exception to the going and coming rule (see p. 19 of the Brief of Appellees). Mr. Davis is not claiming to fall under those exceptions. Bringing up those exceptions does nothing more than to draw attention away from the strong argument made by Mr. Davis in his initial brief that benefits should be paid under this case under the Instrumentality exception because that there was significant benefit to Air Systems by Mr. Davis' months long and regular pattern of use of the Air Systems truck and because there was significant employer control inherent in Air Systems ownership of the truck and lack of direction from Air Systems concerning the route Mr. Davis should use to travel between various jobsites, vendors, home and the Air Systems home base. As detailed in Mr. Davis' prior brief the instrumentality exception in this case

should be deemed to be met under the pattern established by the Supreme Court in *Salt Lake City Corp.* 2007 UT 4, 153 P.3d 179 (2007 and within the specific detailed standardS of balancing benefit to the employer and control by the employer set forth in Jex v. Labor Com'n, 306 P.3d 799 (Utah 2013). And under this exception there is no bar to compensation as argued in Air Systems brief for the route Mr. Davis chose to travel either for an alternative route through Guardsman Pass (see p. 18 of the Brief of Appellees) or as a deviation from the course of employment (see p. 20-21 of the Brief of Appellees). Because of the significant benefits to Air Systems by Mr. Davis' overall use of the company truck to do things other than travel to and from work, and the control of Air Systems over the use of the truck as described above and in Mr. Davis' brief, such travel was within the Air Systems' authorized and directed pattern of Mr. Davis' use of the Air Systems Truck.

CONCLUSION

Based upon the foregoing argument and the argument in Mr. Davis original brief Mr. Davis, as the appellant, requests that the Court of Appeals reverse the conclusions of the labor commission in its denial of benefits based on the commission's erroneous failure to find that Mr. Davis was in the course and scope of employment in a fatal accident while commuting from home to a job site under the "instrumentality" exception to the going and coming rule and that the Court of Appeals remand the matter for an appropriate award of benefits.

DATED this 8th day of June, 2017.

BEN DAVIS LAW PLLC

/ S /

Benjamin T. Davis, Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of: **REPLY BRIEF OF APPELLANT** was served via:

hand delivery (2 copies plus a disc copy with searchable pdf.) upon the following:

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Certificate prepared by Benjamin T. Davis, Attorney for Appellant, Geneinne Davis, on 6/7/2017.