

1992

Greg Hackford, Sherrie Hakford v. Utah Power and Light Company, a Utah Corporation, and Western Petroleum, Inc., a Utah Corporation, and Does I through X : Petition for Rehearing

Utah Supreme Court

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Robert Gordon; David A. Westerby; Gary D. Stott; Michael K. Mohrman; Richards, Brandt, Miller & Nelson; Attorneys for Respondents.

C. Richard Henriksen, Jr.; David M. Jorgensen; Henriksen, Henriksen & Call; Attorneys for Appellant.

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IN THE SUPREME COURT

920208
OF THE STATE OF UTAH

GREG HACKFORD, :
Plaintiff, :
SHERRIE HACKFORD, :
Plaintiff-Appellant, :
v. :
UTAH POWER & LIGHT COMPANY, : Case No. 20208
a Utah Corporation, and :
WESTERN PETROLEUM, INC., a :
Utah corporation, :
Defendants-Respondants :
and DOES I through X, :
Defendants. :

APPELLANT'S PETITION FOR REHEARING

Petition for Rehearing of the Decision
of the Utah Supreme Court
filed June 9, 1987

Robert Gordon
David A. Westerby
UTAH POWER & LIGHT COMPANY
P.O. Box 899
Salt Lake City, Utah 84110
Attorneys for Respondent
Utah Power & Light Company

C. Richard Henriksen, Jr. #1466
HENRIKSEN, HENRIKSEN & CALL, P.C.
320 South 500 East
Salt Lake City, Utah 84102
Attorneys for Appellant
Sherrie Hackford

Gary D. Stott
Michael K. Mohrman
RICHARDS, BRANDT, MILLER
& NELSON
P.O. Box 2465
Salt Lake City, Utah 84110
Attorneys for Respondent
Western Petroleum, Inc.

FILED
JUL 7 1987

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
OF THE STATE OF UTAH

GREG HACKFORD,	:	
Plaintiff,	:	
SHERRIE HACKFORD,	:	
Plaintiff-Appellant,	:	
v.	:	
UTAH POWER & LIGHT COMPANY,	:	Case No. 20208
a Utah Corporation, and	:	
WESTERN PETROLEUM, INC., a	:	
Utah corporation,	:	
Defendants-Respondants	:	
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UTAH POWER & LIGHT COMPANY
P.O. Box 899
Salt Lake City, Utah 84110
Attorneys for Respondent
Utah Power & Light Company

C. Richard Henriksen, Jr. #1466
HENRIKSEN, HENRIKSEN & CALL, P.C.
320 South 500 East
Salt Lake City, Utah 84102
Attorneys for Appellant
Sherrie Hackford

Gary D. Stott
Michael K. Mohrman
RICHARDS, BRANDT, MILLER
& NELSON
P.O. Box 2465
Salt Lake City, Utah 84110
Attorneys for Respondent
Western Petroleum, Inc.

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SUMMARY OF ARGUMENT

The Court's decision filed June 9, 1987 dealt strictly with the history of the common law right of a husband to consortium and Appellant's argument that the language of Section 30-2-4 is ambiguous; that it had been erroneously construed or interpreted in earlier decisions and the interpretation did not follow basic statutory construction principles.

However, the central thrust of Appellant's argument that the previous interpretations of Section 30-2-4- were incorrect and that the statute was and is unconstitutional was not addressed nor determined by the Court's opinion.

Appellant urges the Court to reconsider its decision and in particular to make a determination of the important constitutional issues in light of three specific unanimous decisions by the Court in Malan v. Lewis, 693 P.2d 661 (Utah, 1984), Johnston v. Stoker, 685 P.2d 539 (Utah, 1984) and Berry v. Beech Aircraft, 717 P.2d 670 (Utah, 1985).

Appellant hopes that each member of the Court will consider the long range problems of not limiting legislature's power to modify common law rights and realize it is the Court, not the legislature, who should and must adapt, recognize, refine and maintain the common law. Since a claim for the loss of consortium has always been a common law right and it has only been limited here by Court interpretations, it is up to the Court to recognize that the loss of consortium is part of the common law today. Appellant is not asking the Court to expand the common law but to recognize that today the common law of Utah and the United States

includes the loss of consortium, the protection of the sanctity of the marital relationship for both husband and wife.

ARGUMENT

I. THE COURT IN ITS OPINION FAILED TO ADDRESS OR DECIDE APPELLANT ARGUMENTS AS TO THE UNCONSTITUTIONALITY OF SECTION 30-2-4 AS INTERPRETED.

When this court chose to follow the past interpretation given to the language of Section 30-2-4 it did not address the constitutionality of the elimination of valid a recognized common law right to loss of consortium or the inequality it creates under these interpretations, which both violate provisions of the Utah State Constitution.

A. Section 30-2-4 as interpreted is an unconstitutional elimination of a valid recognized common law right in violation of Article 1 Section 11 and Article 1 Section 7 of the Utah State Constitution.

1. The loss of consortium in the years pre-1898 was a valid recognized common law right in Utah.

The husband's right to recover for the loss of consortium which he suffered when his wife was injured was universally recognized. Restatement, Torts, Section 693: "Husband's Right to Damages for Loss of Consortium," 21 ALR 1519, supplemented 133 ALR 1157.

This Court, in Black v. United States, 263 F. Supp 470 (D. Utah, 1967), Ellis v. Hathaway, 493 P.2d. 986 (Utah, 1972), Tjas v. Procter, 591 P.2d 986 (Utah, 1978) and the written opinion in this case, filed June 9, 1987, has consistantly held that

in the years pre-1898 the right to loss of consortium existed in Utah.

2. Article 1, Section 11 of the Utah State Constitution must be read as imposing limitations on legislative power for the benefit of those persons who are injured in their persons, property or reputations.

One of the constitutional restraints on a legislature's power to totally eliminate a common law right is found in Article 1, Section 11 of the Utah State Constitution which reads in pertinent part, as follows:

All Courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay.

The Utah Supreme Court has recognized this important legislative restraint for many years. In the case of Brown v. Wightman, 151 P. 366 (Utah, 1915), the Court commented on Article 1, Section 11 by stating:

The Courts have, however, always considered and treated these provisions not as creating new rights or as giving new remedies, where none otherwise are given, but as placing a limitation upon the legislature to prevent that branch of the state government from closing the doors of the courts against any person who has a legal right which is enforceable in accordance with some known remedy. (151 P at 366-7)

See also Lewis v. Merchants Protective Association, 235 P 880, 884 (Utah, 1925), Horn v. Shaffer, 235 P 555, 558 (Utah, 1915) and Stoker v. Stoker, 616 P.2d 590 (Utah, 1980).

The recent leading opinion involving Article 1, Section 11 was decided by this Court unanimously (4-0) in December 1985,

in Berry v. Beech Aircraft Corp. 717 P.2d 670 (Utah, 1985). In that case, the Court, after careful analysis determined that:

It is, in fact, one of the most important functions of the legislature to change and modify the law that governs relations between individuals as society evolves and conditions require. However, once a cause of action under a particular rule of law accrues to a person by virtue of an injury to his rights, that person's interest in the cause of action and the law which is the basis for a legal action becomes vested, and a legislative repeal of the law cannot constitutionally divest the injured person of the right to litigate the cause of action to a judgment. (717 P.2d at 676)

The Court held that since Article 1, Section 11 was a substantial limitation on the legislature's power and since the Product Liability Statute of Limitations did not meet the requirements of that constitutional provision, the statute was unconstitutional.

Many other states have used similar constitutional provision to strike down their guest statutes, statutes of repose in Product Liability field and other attempts by legislatures to abolish common law rights. See Point II A. of Appellant's Original Brief.

3. Section 30-2-4 as interpreted is an unconstitutional elimination of the common law right to a claim for loss of consortium as it violates Article 1, Section 11 of the Utah State Constitution.

In Berry, Supra the Court held that:

... Section 11 of the Declaration of Rights and the prerogative of the legislature are properly accomodated by applying a two-part analysis. (717 P.2d at 609)

We will set forth the facts of this case in reference to that two-part analysis.

a. Section 30-2-4 as interpreted does not satisfy Article 1, Section 11 because by the elimination of common law right it did not provide to the injured person an effective and reasonable alternative remedy by due course of law for vindication of that right.

In this case it is clear that the legislative intent behind the passing of the Married Woman's Act was to remove the restrictions placed on married women, known as coverture, thus allowing a married woman to sue, to contract, and own property.

By interpretation the Court has determined that Section 30-2-4 also removed the right of a husband to sue for the loss of consortium when his wife was injured.

However, Section 30-2-4 does not even attempt to establish any alternative to the taking away of this common law right.

Thus, Section 30-2-4 must fail the first of the two part test in that it does not even attempt to set up any effective alternative remedy.

If the Act took away the husband's right to sue for his wife's own injuries and gave her the right, thus taking away of a common law right would be acceptable because it substitutes the right of a married woman to sue for her own injuries herself.

Please refer to Part I of Appellant's Reply Brief.

b. Section 30-2-4 does not satisfy Article 1, Section 11 because there is not a clear social or economic evil to be eliminated and the elimination of the existing legal

remedy (loss of consortium) is an arbitrary and unreasonable means for achieving the objective.

The purpose of Married Women's Act was to remove the legal disabilities of coverture and to allow married women to have the same legal rights to sue, contract and own property as married man and singles. This is a very noble purpose which was widely recognized at that time.

However, the elimination of an existing legal right of a husband to sue for loss of consortium was not necessary to achieving the purpose of the statute. The purpose of the Act was to enable a married woman to bring her own suits, not to remove a common law right from her husband to loss of consortium.

Thus the removal from the husband of the right to loss of consortium is an illogical arbitrary means for achieving the purpose of the statute.

B. Section 30-2-4 as interpreted is unconstitutional under Article 1, Section 24 of the Utah State Constitution because it treats persons similarly situated unequally.

1. Article 1, Section 24 places significant limitations on the power of the legislature to enact laws.

Article 1, Section 24 of the Utah Constitution reads in pertinent part, as follows:

All laws of a general nature shall have uniform operation.

It is clear that said section and the Equal Protection Clause of the 14th Amendment to the United States Constitution place additional restrictions on governmental exercise of authority in passing legislation.

This Court in the recent case of Malan v. Lewis, 693 P.2d 661 (Utah, 1984) stated in the unanimous (4-0) opinion concerning these restrictions:

Basic principles of equal protection of the law are inherent in the very concept of justice and are a necessary attribute of a just society. (693 P.2d at 670)

The Court in Malan, Supra, also stated concerning Article 1, Section 24 and the 14th Amendment:

Although their language is dissimilar, these provisions embody the same general principle: persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same. (693 P.2d at 669)

Justice Robert Jackson in Railway Express Agency, Inc., v. New York, 336 U.S. 106 at 112-113 explained:

This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guarantee against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally . . .

If the precept of equal protection of the laws is not honored, arbitrariness and oppression will prevail. Courts can take no better measure to assure that laws will be just than to require that its laws be equal in protection.

2. Section 30-2-4 fails to meet equal protection standards because it treats persons equally situated differently and the classifications established do not provide a reasonable basis for promoting the objectives of the statute.

The language of Section 30-2-4 as interpreted creates inequality in the law for persons similarly situated. .

There are at least five ways that a third parties' con-

duct can so totally injure the sanctity of the marital relationship that the other spouse loses all love, society, companionship, advice, counsel and conjugal fellowship of ones marital partner.

These are listed below:

1. intentionally causing the death of one's spouse
2. negligently causing the death of one's spouse
3. intentionally alienating the affection of a spouse
4. intentionally causing a debilitating injury to one's spouse
5. negligently causing a debilitating injury to one's spouse.

In each of these examples the person can lose the total love, affection and conjugal interests of their injured spouse. Each feels the loss just as horribly as the other. While the person whose spouse is dead may recover compensation, the person whose spouse has lived after a negligently caused debilitating injury allowing no real companionship, love or society cannot recover.

How can the law say to Sherrie Hackford, whose role instead of wife and companion has turned to babysitter and life-long nurse to care for Greg that she cannot recover, when her neighbor whose husband's life after a negligently caused injury was taken instantly can recover for that loss, which is perhaps not as great a loss as Sherrie's?

How can the law say to Mrs. X that because a burglar who shot and totally disabled her husband, while he attempted a rescue, she cannot recover anything, even though the act was intentional, when her neighbor, Mrs. Y, can be compensated when a teenage boy missed a stop sign and killed Mr. Y. Should the law, if it is to treat these persons similarly situated, allow compensation equally to all for their loss?

However, by virtue of the Courts present interpretation of Utah Statutes and law, the plaintiff, in examples 1, 2 and 3 could bring a cause of action against the person intentionally or negligently causing the spouse's death, injury or alienation. Surely the marital interest of the injured wife in examples 4 and 5 has been hurt and damaged just the same as those in examples 1, 2 and 3, if not worse.

Additionally, the classifications established by Section 30-2-4 do not meet any rational basis test in meeting the objectives of the statute. The objective of the Married Woman's Act to remove the disabilities of coverture had no relation to the unconstitutional distinctions which would remove the husband's right to compensation for negligently created loss of consortium of a living wife, yet allowing such claims in examples 1, 2 and 3 above.

II. THE COURT IN ITS OPINION FAILED TO RECOGNIZE THAT SINCE THE RIGHT TO LOSS OF CONSORTIUM IS A COMMON LAW RIGHT, THE COURT, NOT THE LEGISLATURE, MUST DETERMINE ITS AVAILABILITY AND SCOPE.

To contend that we should leave the decision as to whether Utah recognizes the loss of consortium to the legislature "is a request that Courts of law abdicate their responsibility for the upkeep of the common law. That upkeep it needs continuously, as this case demonstrates." Rodriguez v. Bethlehem Steel Corporation, 525 P.2d 667, 676 (California, 1984).

A. The common law is the fabric of our society and by necessity it must change and adapt to the needs of the community

it serves.

Thomas Jefferson, one of our country's greatest scholars and architects of our country's legal system, stated:

Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. (Jefferson, letter to Samuel Kercheval July 12, 1816)

The United States Supreme Court in the case of Hurtado v. California, (1884) 110 U.S. 516, 530 stated:

This flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law (110 U.S. at 530).

However, this vitality can flourish only so long as the Courts remain alert to their obligation and opportunity to interpret and modify the common law when reason and equity demand it. As conditions, beliefs and needs of society change, so is change and adeptation of sound common law principles and rights.

In Rodriquez v. Bethlehem Steel Corporation, supra, the California Supreme Court states:

The judicial responsibility to which we referred in Pierce arises from the role of the courts in a common law system. In California as in other jurisdictions of Anglo-American heritage, the common law "is not a codification of exact or inflexible rules for human conduct, for the redress of injuries, or for protection against wrongs, but is rather the embodiment of broad and comprehensive unwritten principles, inspired by natural reason and an innate sense of justice, and adopted by common consent for the regulation and government of the affairs of men".

B. The common laws recognition of the protected marital relationship has been longstanding and has adapted to meet needs

of today's society in the concept that marriage is a unique partnership wherein both partners have a protected interest.

It is agreed that early common law developed a protected right of a husband in the loss of services of his wife. Later that right developed into the right of the husband to the loss of the companionship, love and conjugal fellowship of his wife.

Then as married women attained the right to sue, own property and contract in their own names, Courts have adapted the right of a husband to loss of consortium to include a right by both spouses.

In place of the old rule which granted the right to loss of services only to the husband, a new common law rule has arisen, recognizes a valid important protected interest that both spouse have in the marital partnership and which allows each spouse the right to recover for loss of consortium caused by negligent injury to the other spouse.

In Gates v. Foley, 247 So.2d 40 (Fla., 1971) the Florida Supreme Court held:

So it is that the unity concept of marriage has in a large part given way to the partner concept whereby a married woman stands as an equal to her husband in the eyes of the law. By giving the wife a separate equal existence, the law created a new interest which should not be left unprotected by the Courts. (247 So.2d at 44)

Now in 47 states, District of Columbia, United States Supreme Court (Maritime Law), and Virgin Islands the common law has progressed and adapted itself to the needs of a changing society. "The law cannot and is not static. It must keep pace with changes in our society, for the doctrine of stare decisis is

not an iron mold which can never be changed." Gates v. Foley, 247 So.2d 40, 43 (Fla, 1971).

C. This Court should recognize the existing common law of the 47 States and of the United States regarding the unique nature of the marital relationship and allow both partners to bring a cause of action if one is injured.

Many difficult decisions come to the Supreme Court but perhaps none is so difficult as how to deal with older precedent and the doctrine of stare decisis. In fact, all states which now recognize the right to loss of consortium had to deal with the early version of the common law which only allowed the right to the husband. In Appendix "A" attached, is a list of at least twenty-six states which had to review older precedent to finally adopt the right to loss of consortium to both husband and wife.

However difficult, the law must adapt and change or if not, it becomes static and outdated. The pathway to change and adaption is not always easy. When the Supreme Court of California faced this same issue it referred to the landmark case of Dillon v. Legg, 441 P.2d 912 (California, 1968) wherein the Court was faced with earlier precedent and stated:

"That the courts should allow recovery" to a wife for losses she personally suffers by reason of negligent injury to her husband "would appear to be a compelling proposition." But the pathway to justice is not always smooth. Here, as in Dillon, the obstacle is a prior decision of this court; and as in Dillon, the responsibility for removing that obstacle, if it should be done, rests squarely upon us. (525 P.2d at 671)

The Supreme Court of California in Rodriguez v. Bethlehem Steel Corp., supra, at page 678 quoted Montgomery v. Stephen,

101 NW.2d 227, (1960) when it faced the problem of earlier precedent:

Were we to rule upon precedent alone, were stability the only reason for our being, we would have no trouble with this case. We would simply tell the woman to begone, and to take her shattered husband with her, that we need no longer be affronted by a sight so repulsive. In so doing we would have vast support from the dusty books. But dust from the decision would remain in our mouths through the years ahead, a reproach to law and conscience alike. Our oath is to do justice, not to perpetrate error. The Court rejected the precedents denying recovery for loss of consortium as "out of harmony with the conditions of modern society. They do violence to our convictions and our principles. We reject their applicability. The reasons for the old rule no longer obtaining, the rule falls with it. The obstacles to the wife's action were judge-invented and they are herewith judge-destroyed". (525 P.2d at 678)

Our Utah Supreme Court has not been backward in overruling unsound precedent and adapting the common law to fit the needs of today's society. Our Court has acted properly in its role and should not be shackled with old notions of what the right to loss of consortium meant a century ago. When we find that the common law or "judge-made law" is unjust or out of step with the times we should have no reluctance to change it.

In Hahn v. Armco Steel, 601 P.2d 152 (Utah, 1979), this Court adopted strict liability in product liability actions in expansion or recognition of the developing common law.

In Mulhern v. Ingersoll, 628 P.2d 1301 (Utah, 1980), this Court adopted pure comparative negligence in product liability cases.

In Leigh Furniture v. Isom, 657 P.2d 293 (Utah, 1982), this Court recognized the tort of interference with prospective

economic relations.

The list of cases could go on and on because this Court has recognized the need to continually adapt and make changes to the common law.

In Milligan v. Southeastern Elevator Company, 239 NE.2d 897 (NY, 1968), the New York Court of Appeals faced the same issue and stated:

No recitation of authority is needed to indicate that this Court has not been backward in overturning unsound precedent in the area of tort law . . . We act in the finest common law tradition when we adapt and alter decisional law to produce common sense justice . . . Legislative action there could, of course, be, but we abdicate our own function, in a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule. (239 NE.2d at 903).

In Weaver v. Mitchell, 715 P.2d 1361 (Wyoming, 1986), the most recent consortium opinion, the Wyoming Supreme Court Stated:

We have not hesitated to overrule cases that were based on what was perceived to be the common law at the time the decisions were handed down. McClellan v. Tottenhoff, Wyoming, 666 P.2d 1339 (1974). We are justified in overruling prior cases grounded on the common law if they stand for an unfair and improper rule or have outlived their usefulness, and do not meet changing needs.

Without this Court recognizing the common law right to loss of consortium a valid relational interest will go without any protection and this Court will perpetuate inequality and injustice. Should the State of Utah deny that marriage creates a viable protectable interest? Doesn't our society living here in Utah believe that the marriage relationship should be protected from outside injury? At common law, the answer to these questions was a resounding yes. Today a marriage needs this protection more than

ever.

This Court should follow the near unanimous adoption of this view, not because we should jump on a band wagon, but because the other decisions are well reasoned decisions of other states and have recognized that the marital interest should be protected and this is what fits the needs of our present society.

CONCLUSION


Appellant urges the Court to reconsider its opinion as to the appropriate interpretation of Section 30-2-4 and in particular hold that its present interpretation is a unconstitutional elimination of a valid common law right and creates an unconstitutional inequality in its treatment of persons similarly situated.

Appellant also urges the Court to exercise its role as the common law requires and elevate the law of Utah to the recognition of the vital common law right of both husband and wife to compensation for injuries to the sanctity of the marital relationship.

Appellant thanks the Court for its time and consideration of this Petition.

DATED this 6 day of July, 1987.

Respectfully submitted,


C. RICHARD HENRIKSEN, JR.
of HENRIKSEN, HENRIKSEN & CALL, P.C.
Attorney for Appellant,
320 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 521-4145

APPENDIX "A"

- ALABAMA - Swartz v. United States Steet Corp, 293 Ala. 439, 304 So.2d 881 (1974) overruling Smith v. United Construction Workers, 122 So.2d 153 (1960)
- ARIZONA - Glendale v. Bradshaw, 108 Ariz. 582, 503 P.2d 803 (1972) overruling Jeune v. Del E. Webb Construction Co., 77 Ariz. 226, 269 P.2d 723 (1954).
- ARKANSAS - Missouri Pacific Transportation Company v. Miller, 227 Ark. 351, 229 S.W.2d 41 (1957) overruling Federal Court holding in Jordan v. States Marine Corp., 257 P.2d 232 (CA. 9, 1958).
- CALIFORNIA - Rodriguez v. Bethlehem Steel Corp., 328 P.2d 449 12 Cal. 3d 382, 115 Ca. Rptr. 765 525 P.2d 669 (1974) overruling Deshotel v. Atchison, T. & S. F. Ry. Co., 50 Cal.2d 664, 328 P.2d 449 (1958).
- CONNECTICUT - Hopson v. St. Mary's Hospital, 176 Conn. 485, 408 A.2d 260 (1979) overruling Lockwood v. Wilson H. Lee Company, 128 A.2d 330 (1956).
- DELAWARE - Yonner v. Adams, 53 Del. 229, 167 A.2d 717 (1961), overruling Sofolewski v. German, 32 Del. 540, 127 A. 49.
- FLORIDA - Gates v. Foley, 247 So.2d 40 (Fla. 1971), overruling Ripley v. Ewell, 61 So.2d 420 (Fla., 1952).
- GEORGIA - Brown v. Georgia-Tennessee Coaches, Inc., 88 Ga. App. 519, 77 S.E.2d 24 (1953) overruling Glenn v. Western U. Tel. Company, 1 Ga.App. 821, 58 S.E.83.
- ILLINOIS - Dini v. Naiditch, 20 Ill.2d 406, 170 N.E.2d 881 (1960) overruling Patelski v. Snyder, 179 Ill.App 24.
- INDIANNA - Troue v. Marker, 253 Ind. 284, 252 N.E.2d 800 (1969), overruling, among others, Miller v. Sparks, 136 Ind. App. 148, 189 N.E.2d 720 (1963).
- KENTUCKY - Stat. Ann. - Civil Code art. S.W.2d 411 (Ky. 1970) overruling Baird v. Cincinnati New Orleans & T.P.R. Co., (Ky., 1963).
- MARYLAND - Deems v. Western Maryland R. Co., 247 Md. 95, 231 A.2d 514 (1967), overruling, among others, Nicholson v. Blanchette, 210 A.2d 732 (1965), supp. op. 213 A.2d 71.

- MASSACHUSETTS - Diaz v. Eli Lilly & Co., 247 Md. 95, 231 A.2d 514 (1973), overruling, among others, Lombardo v. D.F. Frangioso & Co., Ins. 269 NE.2d 836 (1971).
- MICHIGAN - Montgomery v. Stephan, 359 Mich. 33, 101 N.W.2d 227, overruling, among others, Blair v. Seitner Dry Goods Co., 151 N.W.2d 724.
- MINNESOTA - Thill v. Modern Erecting Co., 284 Minn. 508, 170 N.W.2d 865 (1969), overruling Eschenback v. Benjamin, 263 154 (1935).
- MISSOURI - Novak v. Kansas City Transit, Inc., 365 S.W.2d 539 (Mo. 1963), overruling, among others, Bernhardt v. Perry, 208 S.W. 462.
- NEW JERSEY - Ekalo v. Constructive Serv. Corp., 46 N.J. 82 215 A.2d 1 (1965), overruling, among others, Larocca v. American Claim & Cable Co., 92 A.2d 811, affid 97 A.2d 680 (1952).
- NEW YORK - Millington v. South-Eastern Elevator Co., 22 N.Y.2d 498, 293 N.Y. S.2d 305, 239 N.E.2d 897 (1968), overruling, among many others, Heller v. Spyrido, 235 N.Y. S.2d 168 (1962).
- NORTH CAROLINA - Nicholson v. Hugh Chatham Memorial Hospital, 266 S.E.2d 818 (N.C. 1980), overruling, among other conflicting cases, Helmstetler v. Duke Power Co., 32 S.E.2d 611 (1945).
- OHIO - Clouston v. Remlinger-Oldsmobile Cadillac, Inc., 22 Ohio St.2d 65, 258 N.E.2d 230 (1970) is the lead case; however, Leffler v. Wiley, 239 N.E.2d 235 (Ohio App. 1968) refused to follow an earlier Ohio Supreme Court case, Smith v. Nicholes Bld. Co., 112 N.E. 204 (1915).
- PENNSYLVANIA - Hopkins v. Blanco, 457 Pa. 90, 320 A.2d (1974), overruling Newberg v. Bobowicz, 162 A.2d 662 (1960) due to passage of state ERA.
- TEXAS - Whittlesey v. Miller, 572 S.W.2d 665 (Tex. 1978), overruling Baldwin v. State, 215 A.2d 492 (1965).

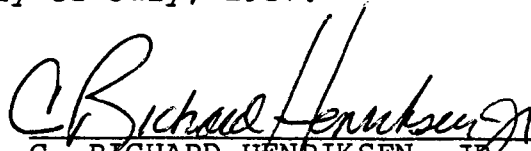
APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF UTAH

GREG HACKFORD,	:	
Plaintiff,	:	
SHERRIE HACKFORD,	:	CERTIFICATE OF COUNSEL
Plaintiff, Appellant,	:	
v.	:	
UTAH POWER & LIGHT COMPANY,	:	Case No. 20208
a Utah Corporation, and	:	
WESTERN PETROLEUM, INC., a	:	
Utah corporation,	:	
Defendants-Respondants	:	
and DOES I through X,	:	
Defendants.	:	

Counsel for the Appellant hereby certifies that the
Petition for Rehearing presented herein is made in good faith and
is not for the purposes of any delay.

DATED this 6 day of July, 1987.


C. RICHARD HENRIKSEN, JR.
of HENRIKSEN, HENRIKSEN & CALL, P.C.
Attorney for Appellant
320 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 521-4145