

1964

# Meredith Page v. Utah Home Fire Insurance Co. : Petition for Rehearing and Brief in Support Thereof

Utah Supreme Court

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Dahl and Sagers; Attorneys for Appellant and Cross Respondent;

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# IN THE SUPREME COURT

of the

## STATE OF UTAH

FILED

MAY 8 - 1964

MEREDITH PAGE,

*Plaintiff, Appellant and  
Respondent on Cross Appeal,*

vs.

UTAH HOME FIRE INSURANCE  
COMPANY, a Utah corporation,

*Defendant, Respondent and  
Cross Appellant.*

Case No.  
99032

### PETITION FOR A REHEARING AND BRIEF IN SUPPORT THEREOF

Appeal from the Judgment of the  
Third District Court for Salt Lake County  
Honorable Merrill C. Faux, Judge

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## TABLE OF CONTENTS

	Page
Petition for Rehearing .....	1
Argument:	
Point One .....	4-5
The Court failed to rule on the issue as to whether or not the defendant waived any defense of fraud and was estopped from raising said defense.	
Point Two .....	5-6
The court erred in its setting forth the ruling on the issue raised as to instructions given to the court.	
Conclusion .....	6

IN THE SUPREME COURT  
of the  
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MEREDITH PAGE,

*Plaintiff, Appellant and  
Respondent on Cross Appeal,*

vs.

UTAH HOME FIRE INSURANCE  
COMPANY, a Utah corporation,

*Defendant, Respondent and  
Cross Appellant.*

Case No.  
9903

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PETITION FOR A REHEARING AND BRIEF  
IN SUPPORT THEREOF

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The appellant Meredith Page, in the above entitled action, respectfully petitions the court to grant a rehearing of the above entitled cause for the reason and upon the following grounds:

POINT ONE

THE COURT FAILED TO RULE ON THE  
ISSUE AS TO WHETHER OR NOT THE DE-

**FENDANT WAIVED ANY DEFENSE OF FRAUD AND WAS ESTOPPED FROM RAISING SAID DEFENSE.**

## **POINT TWO**

**THE COURT ERRED IN ITS SETTING FORTH THE RULING ON THE ISSUE RAISED AS TO INSTRUCTIONS GIVEN TO THE COURT.**

The undersigned attorneys for the Plaintiff and Appellant, Meredith Page, herein, certify that in our opinion there is merit to the foregoing claims and that the court committed errors in the particulars above specified.

**DAHL AND SAGERS**  
**Everett E. Dahl**  
**Victor G. Sagers**  
**Attorneys for Plaintiff and**  
**Appellant**

## **ARGUMENT**

### **POINT ONE**

**THE COURT FAILED TO RULE ON THE ISSUE AS TO WHETHER OR NOT THE DEFENDANT WAIVED ANY DEFENSE OF FRAUD AND WAS ESTOPPED FROM RAISING SAID DEFENSE.**

In appellant's original Brief he strongly argued that the defendant waived any defense it had by reason of fraud and was estopped from raising said defense in that the insurance company, having knowledge of certain facts, had a reciprocal duty to investigate. This point was not discussed, answered or commented upon in the court's main opinion.

Counsel respectfully refers the court's attention to pages 10, 11, 12, 13 and 14 of plaintiff's Brief.

## POINT TWO

### THE COURT ERRED IN ITS SETTING FORTH THE RULING ON THE ISSUE RAISED AS TO INSTRUCTIONS GIVEN TO THE COURT.

The court, in its opinion, set forth that the appellant was objecting to the second interrogatory concerning whether Mr. Page knowingly failed to make a full and honest disclosure of the material facts and that it was vague and uncertain in that the jury would not have understood what the material facts were.

Counsel for the appellant respectfully refers the court's attention to pages 18 and 19 of appellant's Brief wherein appellant objects to the interrogatory in that the interrogatory did not direct the jury's attention to any particular policy.

There was no argument made as to the meaning of the material facts as indicated in the court's opinion.

## CONCLUSION

A great portion of appellant's argument in his Brief was directed to the knowledge defendant insurance company had concerning the fourplex at the time of the issuance of the first policy and other duties that an insurance company had in making an investigation when it has in its possession knowledge of certain facts. Also, the appellant had contended that the second interrogatory was vague in that it did not direct the jury's attention to a specific policy and was, therefore, ambiguous.

It is counsel's contention that if either of the foregoing questions are determined in favor of the appellant, a complete new trial should be granted and the court should then answer the other further question as to what is meant by actual cash value in a fire insurance policy.

Respectfully submitted,

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