

1984

**American Coal Co., Emery Mining Corp., And State Insurance Fund  
v. Terry W. Sandstrom, Industrial Commission of Utah, And  
Second Injury Fund : Petition For Rehearing**

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

FILED

MAY 11 1984

Clerk, Supreme Court, Utah

AMERICAN COAL CO., )  
EMERY MINING CORP., )  
AND STATE INSURANCE FUND, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
TERRY W. SANDSTROM, )  
INDUSTRIAL COMMISSION OF )  
UTAH AND SECOND INJURY FUND, )  
 )  
Defendants. )

PETITION FOR REHEARING

Case No. 19134

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF UTAH.

The defendant Second Injury Fund, and the Industrial Commission of the State of Utah pursuant to Rule 76 (e) (1) of the Utah Rules of Civil Procedure respectfully present this Petition for Rehearing in the above entitled cause and, in support thereof, with due respect show:

The appeal in the cause was submitted on briefs to this Court on October 12, 1983, the date of the Second Injury Fund's response brief.

On May 1, 1984, this Court rendered its decision and remanded the cause to the Industrial Commission for further proceedings in accordance with the Court's opinion.

The defendant seeks a Rehearing upon the following grounds:

1. The majority opinion erred in construing the legislative intent and purpose of the legislature in amending a substantial portion of Utah Code Ann., Section 35-1-69.

2. That it was the specific purpose of the 1981 amendments (Senate

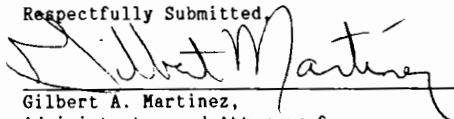
Bill 187) to correct the problem of reimbursements by requiring the employer or its insurance carrier to pay for the injured employee's temporary total disability and medical expenses from the date of the industrial injury until the date the employee's temporary total disability ended without any right of reimbursement from the Second Injury Fund during the first period of disability.

3. That there is no conflict between the first and third paragraphs of Utah Code Ann., Section 35-1-69; that paragraph three was added by the 1981 legislature to specifically clarify that no reimbursement was intended for temporary total disability and medical expenses during the initial period of disability, but only to allow for reimbursement for such benefits accruing after the first period of disability.

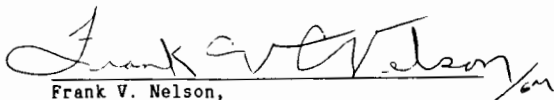
For the foregoing reasons it is urged that this petition be granted.

DATED this 21<sup>st</sup> day of May, 1984.

Respectfully Submitted,

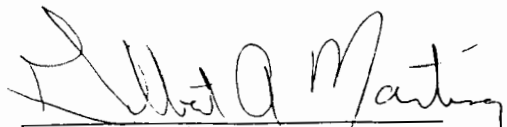


Gilbert A. Martinez,  
Administrator and Attorney for  
Second Injury Fund



Frank V. Nelson,  
Assistant Attorney General and  
Attorney for the Industrial Commission

I hereby certify that the foregoing petition is submitted in good faith  
and not for purposes of delay.



Gilbert A. Martinez,  
Administrator and Attorney for  
Second Injury Fund

CERTIFICATE OF MAILING

I certify that on                     MAY 21                    , 19 84

a copy of the attached                     PETITION FOR REHEARING                    

was mailed to the following persons at the following  
addresses, postage paid:

FRED R. SILVESTER  
Attorney for Plaintiff  
State Insurance Fund  
261 East 300 South, Suite 300  
Salt Lake City, Utah 84111

VIRGINIUS DABNEY  
Attorney for Defendant  
Terry W. Sandstrom  
136 South Main, # 412  
Salt Lake City, Utah 84101

FRANK V. NELSON  
Assistant Attorney General  
236 State Capitol Building  
Salt Lake City, Utah 84114

THE INDUSTRIAL COMMISSION OF UTAH

By                     Madelyn

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

AMERICAN COAL CO., )  
EMERY MINING CORP., )  
AND STATE INSURANCE FUND )

Plaintiff, )

vs. )

TERRY W. SANDSTROM, )  
INDUSTRIAL COMMISSION OF )  
UTAH, AND SECOND INJURY FUND, )

Defendants. )

AFFIDAVIT OF SENATOR

K. S. CORNABY

Case No. 19134

---

K. S. CORNABY, being duly sworn, deposes and states as follows:

1. That during the 1981 Utah Legislative Session I was a member of the Utah State Senate.

2. That in the 1981 Legislative Session I sponsored Senate Bill 187 with Senator Fred Finlinson and Senator Arthur Kimball.

3. That prior to introducing Senate Bill 187 to the legislature, I served as an ex-officio member of the State Advisory Council for the Industrial Commission. That the State Advisory Council under Utah Code Annotated Section 35-1-17 was created for the purpose of addressing problems associated with the Utah Worker's Compensation laws.

4. That the drafting of Senate Bill 187 was accomplished by this State Advisory Committee, comprised of (5) employer representatives (those who pay benefits) and (5) employee representatives (those who receive benefits).

5. That Senate Bill 187 was introduced to the Utah Legislature to modify certain sections of the Worker's Compensation Act of the Utah Code Annotated.

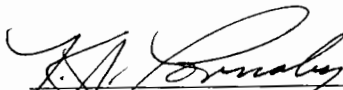
6. That one of the significant modifications of Senate Bill 187 was to alter the provisions of Utah Code Ann., Section 35-1-69, as it

effected reimbursement from the Second Injury Fund.

7. That my understanding of Senate Bill 187, as drafted by the State Advisory Council, was to more equitably handle reimbursements between the Second Injury Fund and the employer's insurance carriers by requiring the employer or its insurance company to be liable for medical costs and temporary total disability compensation, without retroactive reimbursement, up to the end of the period of temporary disability.

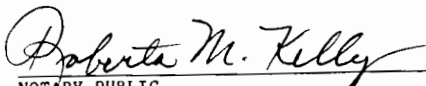
8. That the 1981 Legislative Session did not make any significant changes to Senate Bill 187 and was passed with very little debate or discussion.

DATED this 18<sup>th</sup> day of May, 1984.



R. S. CORNABY  
Attorney-at-law  
559 East South Temple  
Salt Lake City, Utah 84102

SUBSCRIBED AND SWORN to and before me this 18<sup>th</sup> day of May, 1984.



NOTARY PUBLIC  
Residing at Salt Lake City, Utah

MY COMMISSION EXPIRES:

IN THE SUPREME COURT  
OF THE STATE OF UTAH

AMERICAN COAL COMPANY, )  
EMERY MINING CORP., AND )  
STATE INSURANCE FUND, )  
 )  
PLAINTIFF, )  
 )  
vs. )  
 )  
TERRY W. SANDSTROM, )  
INDUSTRIAL COMMISSION OF UTAH, )  
AND SECOND INJURY FUND, )  
 )  
DEFENDANTS. )  
 )

AFFIDAVIT OF

ROBERT B. SYKES

Case No. 19134

ROBERT B. SYKES, being duly sworn, deposes and states as follows:

1. That during the 1981 Utah Legislative Session I was a member of the Utah House of Representatives.

2. That in the 1981 legislative session I was the House floor sponsor for Senate Bill <sup>187. 188</sup> <sub>A</sub>.

3. That prior to introducing this bill I was advised by Commissioner Stephen M. Hadley that Senate Bill 187 was debated and drafted by the State Advisory Committee of the Utah State Industrial Commission.

4. That pursuant to Utah Code Annotated Section 35-1-17, the State Advisory Committee is a statutory body comprised of five members from management and five members from Labor. That as a statutory advisory body, bills drafted by the Committee historically come to the floor of the Legislature as an agreed bill thus generating very little debate or question.

5. That it was my intent in introducing Senate Bill 187 to have the Legislature adopt the specific purpose of the State Advisory Council in making changes to the Worker's Compensation Act.

6. That I was advised by Commissioner Stephen M. Hadley that the specific intent of Senate Bill 187, as drafted by the Advisory Committee, was to eliminate part of the exposure of the Second Injury Fund under Utah Code Ann., Section 35-1-69 in making reimbursements to the employer's insurance carriers.

7. That I was further informed that Senate Bill 187 was to correct the problem of reimbursements by requiring the employer or its insurance carriers to be responsible, without reimbursement from the Second Injury Fund, for all temporary total disability benefits, medical care and other related items up to the end of temporary total disability.

8. That participation of reimbursement from the Second Injury Fund was specifically limited to payments of such benefits after the initial period of temporary total disability.

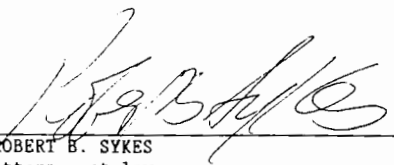
9. That the 1981 Legislative Session did not to my knowledge, intend to make any significant changes to Senate Bill 187.

10. That Senate Bill 187 was debated on the floor of the House on March 12, 1981 without any significant question or reference to the above stated purposes.

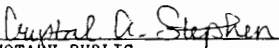
11. That Senate Bill 187 was passed by the full House and then subsequently became law.

DATED this 18<sup>th</sup> day of May, 1984.

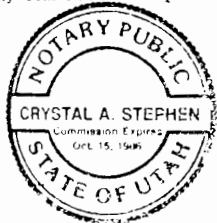


  
\_\_\_\_\_  
ROBERT B. SYKES  
Attorney-at-law  
311 South State Street  
Salt Lake City, UT 84111

SUBSCRIBED AND SWORN to before me this 18th day of May, 1984.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

My Commission Expires:



IN THE SUPREME COURT OF THE STATE OF UTAH

---

AMERICAN COAL CO.,	)	
EMERY MINING CORP.,	)	
AND STATE INSURANCE FUND,	)	
	)	AFFIDAVIT OF THE STATE
Plaintiffs,	)	
	)	COUNCIL FOR THE INDUSTRIAL COMMISSION
vs.	)	
	)	OF UTAH
TERRY W. SANDSTROM,	)	
INDUSTRIAL COMMISSION OF UTAH	)	
AND SECOND INJURY FUND,	)	Case No. <u>19134</u>
	)	
Defendants.	)	
	)	

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The undersigned, Co-Chairmen of the State Council for the Industrial Commission of Utah, being first duly sworn, depose and state as follows:

1. The State Council for the Industrial Commission of Utah was established pursuant to the provisions of Title 35-1-17 UCA 1953. Its members are appointed. There are 10 in number; (5) employer representatives and (5) employee representatives. At the time in question, State Senator K. S. Cornaby was an ex-officio member of the Council. One of the purposes of the Council is to conduct ongoing reviews of Utah Worker's Compensation and Occupational Disease Law in order to advise and assist the Industrial Commission of Utah in the administration of said laws and to make recommendations as to proposed changes in those laws.

2. During 1980 and early 1981, the Council had under consideration proposed amendments for several sections of the Utah Worker's Compensation Law. One of the principal proposed amendments involved changes designed to reduce the amount of monies required to be paid out by the Second Injury Fund as compensation benefits for pre-existing impairments and for

reimbursements to employers and their insurers in cases involving the provisions of Title 35-1-69.

3. The Council in drafting the proposed changes to Section 35-1-69, incorporated as a proposed paragraph the following language.

"Where the payment of temporary disability benefits, medical expenses, or other related items are required as a result of the industrial injury subject to this section, the employer or its insurance carrier shall be responsible for all such temporary benefits, medical care, or other related items up to the end of the period of temporary total disability resulting from the industrial injury. Any allocation of disability benefits, medical care, or other related items following such period shall be made between the employer or its insurer and the second injury fund as provided for herein, and any payments made by the employer or its insurance carrier in excess of its proportionate share shall be recoverable at the time of the award for combined disabilities if any is made hereunder."

It was the intention of the Council that the foregoing language would if adopted, have the effect of requiring an employer or its insurer to pay for the injured employee's temporary total disability and medical expenses from the date of the industrial injury until the date the employee's temporary total disability ended, without right of reimbursement from the Second Injury Fund.

— 4. The Council in drafting its proposed changes to 35-1-69, anticipated that in some cases an injured employee might experience a second period of compensable temporary total disability and/or require further medical care and treatment after his first date of medical stabilization. It was in those specific situations that the Council intended, by its proposed amendment to section 35-1-69, that an employer or its insurer would be entitled to seek reimbursement from the Second Injury Fund of a proportionate share of the expense incurred for the temporary disability and/or medical expenses incurred beyond the first date of stabilization.

5. The proposed amendments to section 35-1-69 that were prepared and submitted as a part of Senate Bill 187 to the 1981 General Session of the Utah State Legislature, were to the best of affiant's knowledge and belief, passed by both the Senate and the House of Representatives without change.

This affidavit is made by the affiants pursuant to authorization of the State Council by resolution passed by the Council in a meeting held on May 16, 1984, and is given in support of the defendant Second Injury Fund's Petition for Rehearing in the above entitled matter.

DATED this 18<sup>th</sup> day of May, 1984.



Robert W. Brandt, Co-Chairman  
Attorney  
P. O. Box 2465  
Salt Lake City, Utah 84110

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of May, 1984.



NOTARY PUBLIC  
Residing at Salt Lake City, Utah

My Commission Expires:

4/25/88

*Ed Mayne*

Ed Mayne, CG-Chairman  
Utah State AFL-CIO  
2261 South Redwood Road  
Salt Lake City, Utah 84119

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of May, 1984.

*Bonnie France*

---

NOTARY PUBLIC  
Residing at Salt Lake City, Utah

My Commission Expires:

May 20, 1986

MINUTES OF THE  
BUSINESS, LABOR & ECONOMIC DEVELOPMENT SENATE STANDING COMMITTEE  
FEBRUARY 20, 1981 -- 8:00 A.M. -- ROOM 324, STATE CAPITOL BUILDING

Members Present: Sen. Arnold Christensen, Chairman  
Sen. Omar B. Bunnell  
Sen. Richard Carling  
Sen. K.S. Cornaby  
Sen. Wayne L. Sandberg

Members Absent: Sen. Sherman A. Wayment

Staff Present: Ruth Ann Brown, Office of Legislative Research  
Mark Paterson, Office of Legislative Research  
Lorie Poor, Secretary

Others Present: Senator Ivan Matheson  
Jack F. Scherbel  
Clayne Ricks, Salt Lake County  
Stan Secor, Apartment Association  
Mark Walch, Utah Association of Counties  
Henry K. Chi, II  
Hershchel Hester, Utah Cities & Towns  
Robert Scott, Sandy City  
Judy Lever, Salt Lake City Corporation  
Steve Hadley, Industrial Commissioner  
(List of Others Present on File)

Chairman Christensen called the meeting to order at 8:23 a.m.

1. APPROVAL OF FEBRUARY 13, 1981 MINUTES AND FEBRUARY 18, 1981 MINUTES--

MOTION: Sen. Sandberg moved to approve February 13, 1981 and February 18, 1981 minutes. The motion passed unanimously with Sens. Carling and Wayment absent.

2. S.B. No. 194, U.C.C.C. EXEMPTION PROVISIONS-- Senator Matheson introduced the bill to the committee, stating that people who give credit need a license to do so. The committee questioned Sen. Matheson.

MOTION: Sen. Bunnell moved the following amendment:

1. Page 1, line 12: Delete "CREDIT, SALES, LEASES, OR LOANS" and insert in lieu thereof "SALES OR LEASES"

The motion passed unanimously with Sens. Carling and Wayment absent.

MOTION: Sen. Sandberg moved that S.B. No. 194, be tabled in committee until more information is available on the effects and who this law effects. The motion passed unanimously with Sens. Carling and Wayment absent.

3. S.B. No. 196, PROPERTY RIGHTS PROTECTION-- Sen. Cornaby introduced the bill to the committee. Jack F. Scherbel came before the committee stating that this bill gives more rights to the property owner, he also distributed a handout to help his presentation (On File). The committee questioned Mr. Scherbel. Clayne Ricks came before the committee and explained how this bill would effect the present laws. The committee questioned Clayne Ricks. Stan Secor stated that down zoning is detrimental. Mark Walch said that this bill would hurt cities and counties. Hershchel Hester encouraged the committee to table the bill. Robert Scott and Judy Lever both spoke against the bill, Ms. Lever said that it would bring planning to it's knees if this bill were passed.

Business, Labor and Economic Development  
Standing Committee  
February 20, 1981  
page two

MOTION: Sen. Cornaby moved to table S.B. No. 196, in committee until the proponents and opponents could work out an amendment. The motion passed unanimously with Sens. Carling and Wayment absent.

4. S.B. No. 187, WORKMEN'S COMPENSATION MODIFICATIONS-- Sen. Cornaby introduced the bill to the committee. Commissioner Hadley told the committee the effects of this bill.

MOTION: Sen. Bunnell moved to report S.B. No. 187, out of committee with a favorable recommendation. The motion passed unanimously with Sens. Carling and Wayment absent.

5. S.B. No. 188, POWERS OF CITIES AND TOWNS-- Sen. Halverson introduced the bill to the committee. Verl Topham explained the bill and it's effects. The committee questioned Verl Topham. Berry Hutching spoke against the bill stating that that there needs to be another solution to the problem, he also distributed some handouts to have the committee look over (On File).

MOTION: Sen. Cornaby moved to report S.B. No. 188, out of committee with a favorable recommendation.

SUBSTITUTE MOTION: Sen. Sandberg moved to adjourn. The motion passed unanimously with Sens. Carling and Wayment absent.

The meeting adjourned at 10:05 a.m.

  
Arnold Christensen  
Committee Chairman

Minute reported by Lorie Poor