

1969

**Don Gerald Williams v. Utah State Department of Finance and James Allen Scott, By and Through His Guardian Ad Litem, Erma Lee Scott v. Utah State Department of Finance, As Administrator of the State Insurance Fund and Jeanette Walton, Administratrix of the Estate Of Robert Walton v. Utah State Department of Finance and Boyd Simmons v. Utah State Department of Finance and Angelo Melo, Waulstine Mcneely and William J. Roedel v. Utah State Department of Finance : Brief of Respondents**

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**Recommended Citation**

Brief of Respondent, *Williams v. Utah Dept of Finance*, No. 11753 (1969).  
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# IN THE SUPREME COURT OF THE STATE OF UTAH

DON GERALD WILLIAMS,  
*Plaintiff,*

vs.

UTAH STATE DEPARTMENT OF FINANCE,  
as Administrator of the State Insurance Fund,  
*Defendant.*

JAMES ALLEN SCOTT, by and through his  
Guardian Ad Litem, Erma Lee Scott,  
*Plaintiff,*

vs.

UTAH STATE DEPARTMENT OF FINANCE,  
as Administrator of the State Insurance Fund,  
*Defendant.*

JEANETTE WALTON, Administratrix of the  
Estate of Robert Walton, Deceased.  
*Plaintiff,*

vs.

UTAH STATE DEPARTMENT OF FINANCE,  
as Administrator of the State Insurance Fund,  
*Defendant.*

BOYD SIMMONS,  
*Plaintiff,*

vs.

UTAH STATE DEPARTMENT OF FINANCE,  
as Administrator of the State Insurance Fund,  
*Defendant.*

ANGELO MELO, WAULSTINE McNEELY and  
WILLIAM J. ROEDEL,  
*Plaintiffs,*

vs.

UTAH STATE DEPARTMENT OF FINANCE,  
As Administrator of the State Insurance Fund,  
*Defendant.*

Case  
No.  
11753

## BRIEF OF RESPONDENTS

Appeal from the Judgment of the Third District  
Court for Salt Lake County,  
Hon. Bryant H. Croft, Judge

FILED

APR 1 1963

Clk. Supreme Court Bldg.

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## BRIEF OF RESPONDENTS

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### STATEMENT OF THE NATURE OF THE CASE

This is an appeal resulting from respondents' attempt to collect from the appellant its share of Court costs and attorney fees incurred during Third Party lawsuits.

## DISPOSITION IN LOWER COURT

The trial court sitting without a jury, granted Summary Judgment in favor of the plaintiff respondents against the defendant appellant.

## RELIEF SOUGHT ON APPEAL

Respondent seek to have the Trial Court's judgment affirmed.

## STATEMENT OF FACTS

The Trial Court granted Summary Judgment against the Utah State Department of Finance, Administrator of the State Insurance Fund, in favor of several Plaintiffs and then consolidated all of the cases since the facts and issues of law were similar in all cases. This particular brief on appeal relates specifically to the Jeanette Walton and Boyd Simmons cases against the above named appellant. These two respondents agree generally with the statement of facts as outlined in appellant's brief, but in order to aid the Court in ruling in the Walton and Simmons cases, the following statement of facts is hereby submitted.

The claims involved in the Walton and Simmons cases are substantially identical as far as the facts involved. Both claims resulted from injuries suffered during falls on the same job site. The Walton Case involved a wrongful death claim for the death of Robert Walton while the Simmons case involved a claim by Boyd Simmons for his personal injuries suffered from the fall (R. 12 Walton file; R. 10 Simmons file). The plaintiffs in both cases re-

quested and received compensation payments from the defendant appellant (R. 13 Walton file; R. 10 Simmons file). In both cases the plaintiffs were successful in pressing claims against Third Parties and thereafter they paid the entire bill for Court costs and attorney fees incurred during the Third Party actions (R. 13 Walton file; R. 10 Simmons file). The State Insurance Fund in both cases insisted that they were entitled to be reimbursed by both parties in full for the compensation that it had paid and also insisted that it was not required to pay its proportionate obligation for the Court costs and attorney fees incurred in the Third Party actions (R. 2, 17 Walton file; R. 2, 15 Simmons file). Both respondents thereafter reimbursed the State Insurance Fund in full, under protest, with the express written understanding that they were reserving their rights to collect from the State Insurance Fund its proportionate obligation for the costs and attorney fees incurred in the Third Party actions (R. 13 Walton file; R. 10 Simmons file). The State Insurance Fund was reimbursed by the Plaintiff in the Walton case on December 21, 1966, and it was reimbursed in the Simmons case in January of 1967 (R. 13 Walton file; R. 11 Simmons file). Thereafter the Plaintiffs demanded that the State Insurance Fund pay for its proportionate obligation towards the costs and attorney fees as required by the provision of Utah Code Ann. Section 35-1-62 (1953 as amended), and as interpreted by the Utah Supreme Court in *Worthen vs. Shirtleff and Andrews, Inc.*, 19 Utah 2nd 80, 426, P. 2d 223 (1967), but despite said demand the State Insurance Fund refused to recognize the above authorities and respondents were forced to file the suits, which are presently before this Court on Appeal (R. 13 Walton file; R. 11 Simmons file). It is important to note

that in both the Walton and Simmons cases, suit was filed on January 20, 1969 (R. 1. Walton File; R. 1 Simmons File). Since both suits were filed within three (3) years from the date the compensation carrier was reimbursed, neither the Walton nor the Simmons case can be barred by either a four year statute of limitations for contracts not in writing or the three year statute of limitations applicable to actions for liability created by statute.

#### ANSWER TO POINT ONE

APPELLANT MUST BEAR ITS PROPORTIONATE OBLIGATION FOR THE COSTS AND ATTORNEY FEES INCURRED IN SUCCESSFUL THIRD PARTY ACTIONS PURSUANT TO THE PROVISION OF UTAH CODE ANNOTATED 35-1-62 (1953 AS AMENDED) AND AS CLARIFIED BY *WORTHEN VS. SHIRTLEFF AND ANDREWS INC.*, 19 UTAH 2D 80, 426 P. 2D 223 (1967).

The appellant, while acknowledging the ruling of the Utah Supreme Court in *Worthen*, contends that *Worthen* should not be applied retroactively despite the fact that the *Worthen* case itself was applied retroactively. In that case, the Plaintiffs negotiated successfully a settlement for the Third Party at a time when the *McConnell* case was still the controlling law of the State, but this Court, refusing to recognize any retroactivity argument, held in effect that this settlement should be treated in the manner that the legislature really intended the statute to mean and required the compensation carrier to pay its proportionate share of its obligation for the attorney fees,

despite the fact that no agreement had been entered into requiring such payment between the attorney and the compensation carrier. The general rule concerning the effect of decisions like Worthen was enunciated by Judge Phillips in *Sun Ray Oil Company vs. Commissioner of Internal Revenue*, 147 F. 2d 962 (10th circuit 1945) and is certainly apropos to the instant case:

“It is a general rule that the decision of the highest appellate Court of a jurisdiction overruling a former decision is restrospective in its operation. In effect, it declares that the former decision never was law.”

We refer the Court to the numerous cases cited in 10 ALR 3rd 1371 which establish that the general rule in civil cases is that the judicial overruling of a precedent has both prospective and retroactive effect unless the overruling decision declares that it shall have only prospective effect. The Supreme Court in *Worthen* made no such declaration that Worthen should have only prospective effect and therefore the plaintiffs involved in the Walton and Simmons cases are entitled to file their cases for costs and attorney fees and receive the same treatment as far as the applicable law as did the plaintiff in the Worthen case.

## ANSWER TO POINT TWO

THE RECORD IS ABSENT ANY EVIDENCE OF FACTS NECESSARY TO CREATE EQUITABLE ESTOPPEL AGAINST RESPONDENTS.

The Utah Supreme Court in *Migliaccio vs. Davis et al.*, 120 Utah 1, 232 P. 2d 195 (1951) recognized the general

rule of Equitable Estoppel as set forth in the following language:

“ ‘ \*\*\* Equitable estoppel or estoppel in pais is the principal by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying or asserting the contrary of, any material fact, which by his words or conduct, affirmative or negative, intentionally or through culpable negligence, he has induced another, who was excusably ignorant of the true facts and who had a right to rely upon such words and conduct, to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion were allowed. ’ ”

The record is absent any evidence in either the Walton or the Simmons case, of any detrimental reliance by the State Insurance Fund upon any words or conduct by either of the respondents. In fact, the answers to both the Walton Complaint as well as the Simmons Complaint, admit that the complainants in both cases reimbursed the State Insurance Fund under protest with the express written understanding that the said payments were being made under protest and respondents would pursue their right to be reimbursed for the attorney fees and Court costs that the State Insurance Fund was obligated to pay. Appellant's only reliance in either of these cases, if any, was based on its own mistaken assumption of what the law was as far as its obligation for costs and attorney fees. We know of no law in existence which gives birth to an estoppel merely because a party relies upon its own mistaken interpretation of what the law is.

## ANSWER TO POINT THREE

RESPONDENTS IN BOTH THE WALTON AND SIMMONS CASES FILED TIMELY CLAIMS WITHIN THREE YEARS FROM THE DATE THE STATE INSURANCE FUND WAS REIMBURSED.

Appellant in Point Three of its brief erroneously contends that plaintiffs claims are barred by either a four (4) or a three (3) year statute of limitations. The appellant contends first that the four (4) year statute of limitations pertaining to oral contracts should not be applied but that the limitation period of three (3) years for actions for liability based on a State statute should be applicable. Regardless of which limitation period the trial court applied or which statute the Supreme Court holds is applicable, the claims filed by Walton and Simmons are not barred. In the instant cases the limitation period would begin to run from the date the compensation carrier was reimbursed. The appellant in Walton was reimbursed on December 21, 1966, while the carrier in Simmons was reimbursed in the latter part of January of 1967. In both cases suit was filed on January 20, 1969, within three years from the date the appellant was reimbursed and therefore neither claim is barred by either a three (3) or four (4) years statute. The same rationale applies to the three (3) year limitation period provided for under the provisions of the Utah Code Annotated section 35-1-99 for actions for compensation under workmen's compensation laws.

We would argue for the benefit of the other respondents involved in this case that this Court should apply the

principle that when two or more statutes of limitation may apply to a given fact situation the longest period of limitation should be preferred. The Court in *Juab County, Dept. of Public Welfare vs. Summers*, 19 Utah 2d 49, 426 P. 2d 1 (1967) made it quite clear that it would apply the Statute of Limitations which would uphold an action rather than defeat it if there were doubts as to which limitation period applied. (see also *Harding Co., Inc., vs. Eimco Corp.*, 1 Utah 2d 320, 226 P. 2d 49 (1954).

#### ANSWER TO POINT FOUR

THE CLAIMS IN THE INSTANT CASES DO NOT INVOLVE ACTIONS AGAINST ANY EMPLOYER, OFFICER, AGENT, OR EMPLOYEE FOR INJURIES SUSTAINED BY AN EMPLOYEE AND THEREFORE THE REQUIREMENTS OF UTAH CODE ANN. SECTION 35-1-60 (1953) ARE INAPPLICABLE.

The instant cases merely involve actions by claimants for reimbursement from the State Insurance Fund for costs and attorney fees which the State Insurance Fund is obligated to pay pursuant to the provision of section 35-1-62. They in no way involve actions by employees for injuries sustained during the course of employment against any employer, officer, agent, or employee. It is obvious from reading the case of *Worthen vs. Shirtleff*, supra that claimants are not obligated to first have such claims presented to and denied by the Industrial Commission before they can bring these claims to Court. The spurious attempt to relate the subject matter contained in Utah Code Ann. 35-1-60, 1953 as amended with the

claims filed in the instant cases should be rejected summarily.

### ANSWER TO POINT FIVE

THE RESPONDENTS ARE THE REAL PARTIES IN INTEREST SINCE THEY HAVE PAID ALL COSTS AND ATTORNEY FEES INCURRED IN THE THIRD PARTY LAWSUITS.

In the instant case the respondents have each paid their attorney, Donn E. Cassity, the agreed upon attorney fee as well as the Court costs and because of said payment they are entitled to be reimbursed from the State Insurance Fund as the real party in interest and are entitled to the proportionate share that the appellant is obligated to pay pursuant to the provision of Utah Code Annotated Section 35-1-62 (1953 as amended). This Court on a previous appeal in the case of Worthen vs. Shurtleff and Andrews Inc., *supra*, held that where each of the parties have a right to bring the action and one take the initiative and obtains the recovery for the benefit for both, it is only fair that each bear its share of the expenses necessarily incurred in doing so. In the instant case the respondents have assumed the entire obligation and are entitled to be reimbursed by the appellants.

Appellants "real party in interest" defense should also be rejected summarily for the reason that appellants have no standing to assert such a defense. In the instant case the respondents elected to pay their attorney and later obtain reimbursement from the State Insurance Fund. The only parties who would have standing under

such a transaction to assert such a defense would either be the respondents or their attorney, Donn E. Cassity, both of whom have elected to proceed in the name of the respective respondents.

## ANSWER TO POINT SIX

A FINDING OF MERE DELAY WITHOUT SHOWING THAT SAID DELAY HAS INEQUITABLY PREJUDICED THE APPELLANT DOES NOT CONSTITUTE LACHES.

The appellants in answer to respondents complaint asserted the bare defense of Laches based entirely upon the ground of mere delay. The Supreme Court of Utah in *Mawhinney vs. Jensen* 120 Utah 142, 232 P. 2d 769, 773 (1951) discussed the following legal considerations necessary to create a finding of laches:

“The Equitable doctrine of laches is founded upon considerations of time and injury. ‘Laches in legal significance is not mere delay, but delay that works a disadvantage to another.’ Pomeroy’s Equity Jurisprudence, 4th Ed. Section 1442; Chase vs. Chase, 20 R.I. 202, 37 A. 804. \*\*\*The question of laches can only be determined under the circumstances of each case and there must be a finding that the delay has inequitably prejudiced the defendant before the remedy is barred.”

In the instant case, the record is absent any evidence that the delay in any way had inequitably prejudiced the State Insurance Fund and therefore under the holding of the Court in *Mawhinney vs. Jensen*, supra the defense of laches must fall.

## ANSWER TO POINT SEVEN

THE PROVISIONS CONTAINED IN UTAH CODE ANNOTATED SECTION 35-1-62 (1953 AS AMENDED) AS INTERPRETED BY THE COURT IN WORTHEN VS. SHIRTLEFF, SUPRA OBLIGATE THE APPELLANT TO PAY ITS PROPORTIONATE SHARE OF THE COSTS AND ATTORNEY FEES INCURRED IN THE THIRD PARTY ACTIONS.

The appellant contends without any evidence in the record in support thereof, that "in light of the costs and problems raised by Worthen" the Court may wish to reject the holding of the Worthen case. We disagree. The Court in Worthen found that the above statute with unmistakable clarity required that the expenses and attorney fees should be charged proportionately against the injured party and the compensation carrier as their interest appear. The appellant's attempt to reargue the Worthen case through faulted logic is more in the nature of a belittled petition for a rehearing after a previous appeal in which all of the issues presented here were resolved. We ask the Court to reject such a contention in accordance with the approach taken in *Prudential Federal Savings and Loan Association vs. Saint Paul Insurance Co.* 22 Utah 2d 70, 448 P. 2d 724 (1968).

## CONCLUSION

The record is clear that respondents reimbursed the appellant in full under protest with the express understanding that they would expect the appellant to pay its share of the costs and attorney fees incurred in the third party lawsuits. Respondents' claims in both cases were filed timely within three years from the date payment was made to appellant. There is nothing in the record except mere lapse of time and appellant's own mistaken interpretation of the law to support the defenses based on laches and estoppel. The record lacks any evidence of injury to the appellant or any inducement by the respondents which appellant relied on to its detriment. In light of that record the trial courts judgment should be affirmed.

Respectfully submitted,

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