

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 : Petition Of David K. Watkiss and Robert S. Campbell, Jr., To Appear Amicus Curiae and Request For Oral Argument Thereon

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Recommended Citation

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

DON GERALD WILLIAMS; JAMES ALLEN SCOTT; JEANETTE WALTON, Administratrix of the Estate of ROBERT WALTON, Deceased; BOYD SIMMONS; ANGELO MELO; WAULSTINE McNEELEY and WILLIAM J. ROEDEL,

Plaintiffs and Respondents

vs.

UTAH STATE DEPARTMENT OF FINANCE as Administrator of the STATE INSURANCE FUND,

Defendant and Appellant

Case No.

11753

PETITION OF DAVID K. WATKISS AND ROBERT S. CAMPBELL, JR., TO APPEAR AMICUS CURIAE
AND
REQUEST FOR ORAL ARGUMENT THEREON

DAVID K. WATKISS and ROBERT S. CAMPBELL, JR., members of the Bar of this Honorable Court, do hereby, pursuant to the Rules of Practice of this Court respectfully petition for leave to appear *amicus curiae* with respect to the decision filed by this Court on January 29, 1970, in the above-entitled case, and the possible prejudicial effect thereof on the body of law of this State and to submit and

make an oral presentation and argument to the Court. It is the understanding of these petitioners that Petitions for Rehearing of this Case have been filed by each of the above-named respondents.

In support of this Petition to appear *amicus curiae*, petitioners respectfully represent the following to the Court:

1. Petitioners are legal counsel for two firms of attorneys in the State of Utah who have brought a direct suit against an insurance compensation carrier for reasonable attorneys' fees in connection with the recovery and satisfaction of compensation awards by reason of their successful handling of claims against a third-party tortfeasor. Judgment has been granted in favor of these law firms and against the compensation carrier for a reasonable fee for these legal services rendered, pursuant to the provisions of 35-1-62 *U. C. A.* 1953 as amended. The settlement of the claims which gave rise to the recovery in satisfaction of the compensation benefits occurred in November of 1965 so that the cause of action for a reasonable fee arose after the cause of action in *Worthen v. Shurtleff & Andrews*, 19 Utah 2d 80, 426 P. 2d 223 (1967), but before *Worthen* was decided in April 1967.

2. Although the facts in the case at bar may be substantially different from the facts in the case in which petitioners represent the two law firms, now pending on appeal before the Court of Appeals for the 10th Circuit, nevertheless this court's decision of January 29, 1970, while therefore distinguishable, may have an effect on the determination ultimately made in that appeal. Petitioners

therefore have a genuine and substantial interest in respectfully requesting that this court reexamine the rationale and the language of its opinion and the holding reached.

3. Because this *Williams* decision is the first consideration and ruling ever made by this court on the old and difficult question of whether an overruling decision shall be applied retroactively or only prospectively and thus this decision may be of great future significance to the law of this State despite the restrictive language contained therein, this court should very carefully consider the rule laid down and make it and the basis for it as clear as possible.

4. The initial decision in the case at bar and its prospective impact on the ruling case law in this jurisdiction with respect to the retroactive effect of a judicial interpretation of a statutory enactment is not consistent with basic precepts of fairness, equity or the prevailing rule of law of the highest courts of the several states in the nation.

5. The Decision of January 29, 1970, tends to provoke arbitrary, discriminatory, unreasonable, and inequitable results in its application to the broader spectrum of the law of this State.

6. In a larger sense, these petitioners earnestly submit that fundamental notions of justice and equity dictate further consideration, reevaluation, reversal, modification or clarification of the Court's Decision of January 29, 1970.

Respectfully submitted,

DAVID K. WATKISS
ROBERT S. CAMPBELL, JR.

400 El Paso Gas Building
Salt Lake City, Utah 84111

Petitioners Amicus Curiae