

2004

# Gerald Vaughn v. Darin Anderson : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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GERALD VAUGHN,

Plaintiff/ Appellant,

v.

DARIN ANDERSON,

Defendant / Appellee.

**APPELLEE'S BRIEF**

Appellate Case No. 20040651-CA

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**BRIEF OF APPELLEE**

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APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE ROBERT K.  
HILDER.

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## **STATEMENT OF JURISDICTION**

The Utah Court of Appeals has jurisdiction over this case pursuant to Utah Code Ann. §78-2-2(3) & (4).

## **STATEMENT OF THE ISSUES**

1. Whether the trial court correctly instructed the jury that if it found that Vaughn’s medical bills did not exceed the \$3,000 threshold then Mr. Vaughn could not maintain a cause of action against Anderson for general damages.
2. Whether the trial court correctly excluded evidence that State Farm, as Mr. Vaughn’s no-fault carrier, had provided PIP benefits in excess of \$3,000.
3. Whether Utah Code Ann. §31A-22-307(2)(e)(i), which provides a procedure by which a medical panel may be called to resolve disputes over the reasonable

value of medical expenses in first-party disputes between an insured and his own no-fault carrier, shifted the burden of proof to Mr. Anderson, in a third-party case, to prove before trial that Mr. Vaughn's medical expenses did not exceed \$3,000.

### **RELEVANT STATUTORY PROVISIONS**

Utah Code Ann. §31A-22-307 & Utah Code Ann. §31A-22-309 are set forth in an addendum to this brief.

### **STATEMENT OF THE CASE**

1. This matter arises out of an automobile accident that occurred on September 25, 1997. (R. at 83-84.)

2. The parties stipulated that Anderson was negligent and that Anderson's negligence proximately caused the accident. However, the parties disputed the injuries and damages that were proximately caused by the accident. *Id.*

3. Vaughn claimed that he sustained neck and back injuries as a result of the accident, as well as an inguinal hernia. (R. at 2.)

4. Anderson disputed that the accident caused Vaughn's hernia, and therefore argued at trial that he was not responsible for medical expenses related to the hernia.

5. Because Vaughn's medical expenses (other than those related to the hernia) were less than \$3000.00, and he did not sustain a permanent impairment, Anderson argued to the jury that Vaughn had not met the Utah No-Fault Requirements and therefore, was not entitled to general damages.

6. In an attempt to establish that he had met threshold, Vaughn sought to introduce evidence that his PIP insurer, State Farm, (also the liability insurer for Anderson) paid PIP benefits in excess of \$3,000. The trial court however, precluded Vaughn from bringing such evidence before the jury. (R. at 219.)

7. At the close of evidence, a special verdict form was submitted to the jury asking them to determine whether they believed, upon a preponderance of the evidence, that Anderson had proximately caused Vaughn \$3,000 or more in medical expenses, or if he sustained a permanent impairment as a result of Anderson's conduct. (*See* R. at 167-69.)

8. The jury found, upon a preponderance of the evidence, that Anderson had not proximately caused Vaughn \$3,000 or more in medical expenses and had not caused a permanent impairment. *Id.*

9. Having concluded that Vaughn had not incurred \$3,000 or more in medical expenses as a proximate result of Anderson's negligence, and had not sustained a permanent impairment, the jury was instructed not to further consider Vaughn's claim for general damages and a judgment was entered in favor of Anderson. (R. at 201-03.)

10. Vaughn filed a motion for judgment notwithstanding the verdict raising substantially the same issues as raised on this appeal. (R. at 210-30.)

11. Vaughn's motion for judgment notwithstanding the verdict was denied. (R. at 254-55.)



## **SUMMARY OF THE ARGUMENTS**

The trial court's decision to deny Vaughn's motion for judgment notwithstanding the verdict should be affirmed. No error was committed where the trial court's special verdict form correctly and sufficiently advised the jury as to the status of the law.

The trial court did not abuse its discretion when it excluded evidence that Vaughn's PIP carrier paid benefits in excess of \$3000.00. Vaughn's PIP carrier had a duty to pay the PIP benefits that arose out of a first-party contractual relationship with Vaughn. Evidence of PIP payments of an insurance company is not admissible to establish that the threshold of \$3,000 under UCA § 31A-22-309 has been met. *C.T. ex rel. Taylor v. Johnson*, 977 P.2d 479, 481 (Utah 1999). As such, evidence of such payment was properly excluded.

Finally, the trial court correctly instructed the jury that Vaughn, the plaintiff, had the burden to demonstrate that his medical expenses exceeded the \$3,000 threshold. The no-fault statutory scheme does not shift the burden of proof to defendants. Interpreting the statute in the way suggested by Vaughn would undermine the multi-faceted purposes of the no-fault statutory scheme. As such, the trial court correctly interpreted the No-Fault statute and the decision of the trial court should be affirmed.

## ARGUMENT

### **I. THE TRIAL COURT CORRECTLY SUBMITTED A SPECIAL VERDICT FORM TO THE JURY THAT REQUIRED THE JURY TO DETERMINE WHETHER VAUGHN’S MEDICAL EXPENSES MET OR EXCEEDED THE \$3,000 THRESHOLD BEFORE CONSIDERING THE ISSUE OF GENERAL DAMAGES**

This Court should affirm Judge Hilder’s submission of the special verdict form to the jury as no error was committed. Special verdict forms are reviewed for correctness as the “special verdict form is a jury instruction, and determining the propriety of jury instructions presents a question of law.” *Hart v. Salt Lake County Comm’n*, 945 P.2d 125, 136 (Utah Ct. App. 1997); *see also Collins v. Wilson*, 1999 UT 56, ¶22, 984 P.2d 960 (Utah 1999). Furthermore, this Court should only find error with the trial court’s special verdict form “if it tends to mislead the jury to the prejudice of the complaining party or insufficiently or erroneously advises the jury on the law.” *Tingey v. Christensen*, 1999 UT 68, ¶16, 987 P.2d 588 (Utah 1999).

The special verdict form submitted to the jury in this case did not mislead the jury nor prejudice Mr. Vaughn as it sufficiently and correctly advised the jury on the law.

#### **A. The Special Verdict Form Sufficiently and Correctly Advised the Jury Regarding Utah Law**

Utah’s No-Fault statute explicitly provides that a plaintiff “may not maintain a cause of action for general damages” unless the injured person has sustained “(i) death; (ii) dismemberment; (iii) permanent disability or permanent impairment based upon objective findings; (iv) permanent disfigurement; or (v) medical expenses to a person in

excess of \$3,000.” Utah Code Ann. §31A-22-309(1)(a) (hereinafter “§309(1)(a)”; *see also Warren v. Melville*, 937 P.2d 556, 558 (Utah Ct. App. 1997). The purpose of this “partial tort immunity” is to “preclude vexatious lawsuits against tortfeasors to recover relatively minor damages.” *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶¶15, 17, 56 P.3d 524 (Utah 2002). In addition to precluding vexatious lawsuits, “[a] primary objective of the statute is to create a more efficient and equitable method for handling the bulk of personal injury claims in a cost effective manner.” *Warren*, 937 P.2d at 562.

Vaughn has argued that the issue of whether or not his medical expenses exceeded the \$3000.00 threshold cannot be raised at trial. This position has no merit. Section 309(1)(a) only limits causes of action for general damages. As such, it is appropriate to raise the threshold issue at trial where the amount of medical expenses (i.e. special damages) is reasonably disputable. *See e.g., C.T. by and through Taylor v. Johnson*, 1999 UT 35, 977 P.2d 479 (Utah 1999); *Tingey v. Christensen*, 1999 UT 68, ¶5, 987 P.2d 588 (Utah 1999) (plaintiff was not entitled to general damages after jury returned verdict that damages had not exceeded \$3,000 threshold). In addition to raising the issue at trial, threshold can also be raised at any other appropriate time by motion. *See e.g., McNair v. Farris*, 944 P.2d 392, 393 (Utah Ct. App. 1997) (defendant was entitled to summary judgment where plaintiff’s medical expenses did not exceed \$3,000).

The facts of this case are similar to those in *Taylor* where the plaintiff sought damages following an automobile accident with the defendant. *Taylor*, 1999 UT 35 ¶2, 977 P.2d 479. The *Taylor* plaintiff alleged that he had sustained \$4,596.00 in medical

expenses and therefore met the statutory requirement of having incurred in excess of \$3,000 in medical expenses. *Id.* ¶3 n.2. However, the jury found that “only \$339.00 of the plaintiff’s medical expenses were proximately caused by the accident with Johnson.” *Id.* ¶¶3, 7. Based on the jury’s determination under §309(1)(a) that the plaintiff had not reasonably and necessarily incurred in excess of the \$3,000 threshold amount, the trial court found in favor of the defendant. *Id.* ¶7.

Like the trial judge in *Taylor*, Judge Hilder’s special verdict form was not misleading to the jury because it sufficiently and correctly advised the jury that Vaughn may not maintain a cause of action against Anderson for general damages unless he met or exceeded the \$3,000 threshold requirement. Paragraph three of the special verdict form instructed the jury to answer “yes” or “no” to the following question:

From a preponderance of the evidence, has the Plaintiff Gerald Vaughn sustained \$3,000 or more in medical expenses as a proximate result of the accident?

(R. at 167.) If the jury responded “no” to that question, they were instructed not to answer question number four, which asked them to ascertain the total amount of damages, including general damages. *Id.* at 167-68. This was a sufficient and correct instruction as it accurately reflected the law as set forth in §309(1)(a). The jury followed the special verdict form and responded that Mr. Vaughn had not sustained \$3,000 or more in medical expenses. *Id.* Therefore, the decision of the trial court should be affirmed.

## **II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT EXCLUDED EVIDENCE OF THE AMOUNT PAID IN PIP COVERAGE BY VAUGHN'S NO-FAULT CARRIER**

The trial court, under Rule 403, excluded evidence that State Farm Insurance (Vaughn's PIP carrier) paid over \$3,000 in PIP benefits to Vaughn. Vaughn sought to introduce such evidence for the purpose of demonstrating that he met threshold. Judge Hilder did not abuse his discretion in excluding such evidence as the Utah Supreme Court has held that evidence of PIP payments of an insurance company is not admissible to establish that the threshold of \$3,000 under UCA § 31A-22-309 has been met. *C.T. ex rel. Taylor v. Johnson*, 977 P.2d 479, 481 (Utah 1999). The standard of review for whether a trial court properly excluded evidence under Rule 403 is abuse of discretion. *Goebel v. Salt Lake City S. R.R. Co.*, 2004 UT 80, ¶35 n.1, 104 P.3d 1185 (Utah 2004).

Vaughn has argued that the exclusion of this evidence allowed Anderson “to hypocritically make threshold the major issue in the case,” after “the court precluded [Mr. Vaughn] from adducing evidence of the evaluative process performed by the defendant's liability carrier.” (Appellant's Brief at 15.) However, Vaughn's position that Anderson's liability carrier (the same carrier that paid PIP benefits) evaluated Vaughn's damages in excess of \$3,000 mischaracterizes the relationship State Farm had with Vaughn. State Farm was the liability insurer for Anderson and the no-fault insurer for Vaughn. The “evaluative process” Vaughn refers to was State Farm's determination to pay \$3,530.61 in PIP benefits on behalf of Vaughn. (R. at 226-27.) Vaughn's argument that State Farm

made such an evaluation as Anderson's liability carrier is misleading because State Farm actually made that evaluation as Vaughn's no-fault carrier.

In this case, as his PIP carrier, State Farm owed Vaughn a duty created by the first-party contractual relationship. *See Taylor*, 1999 UT 35, ¶7 n.3, 977 P.2d 479. It was under this duty that the PIP benefits were paid. A very different relationship existed, however, between State Farm and Vaughn in the liability claim against Anderson. In that situation, State Farm and Vaughn have a third party relationship very different from the PIP setting. In the third party litigation setting, State Farm has a duty to its insured, Mr. Anderson, to evaluate Vaughn's claims, and pay only what is related to the accident. This very issue was addressed in *Taylor* when the Utah Supreme Court specifically rejected the plaintiff's argument that PIP payments made by an insurer could establish the threshold amount for his medical expenses. *Id.* In that case, the Utah Supreme Court specifically determined that a PIP payment made by a plaintiff's own insurer did not establish the threshold amount for his medical expenses, because the mere fact that the PIP insurer paid for medical expenses which the jury found were not related to the accident was not binding on the defendant for purposes of establishing the threshold and exposing him to liability for general damages, particularly since a PIP carrier has a first party contractual relationship with its insured and owes that insured certain duties. *Id.*

As noted by the Utah Supreme Court in *Taylor*,

We reject [Plaintiff's] argument that the Personal Injury Payment ("PIP") made by his own insurer establishes the threshold amount for his medical expenses. The mere fact that his PIP insurer paid for medical expenses

which the jury found were not related to the accident should not be binding on [Defendant] for purposes of establishing the medical expenses threshold and exposing [Defendant] to liability for general damages. This is especially so since a PIP carrier has a first party contractual relationship with its insured--in this case [Plaintiff]--and owes certain duties to him.

*See Taylor*, 1999 UT 35, ¶7 n.3, 977 P.2d 479. According to the clear holding of the Utah Supreme Court in the *Taylor* case, the trial court in this matter did not abuse its discretion when it precluded evidence of the payment of PIP benefits for the purpose of establishing threshold. As such, the decision of the trial court should be affirmed.

**III. SECTION 31A-22-307(2)(e) DOES NOT IMPOSE A BURDEN ON THE DEFENDANT TO PROVE, PRIOR TO TRIAL, THAT PLAINTIFF'S MEDICAL EXPENSES DID NOT EXCEED \$3,000**

The Court should affirm the trial court's decision to deny Vaughn's motion for a judgment notwithstanding the verdict because Judge Hilder correctly interpreted the no-fault statutory scheme which requires Vaughn to prove, at trial, that his medical expenses related to the accident exceeded \$3,000. "The interpretation of statutory provisions presents a question of law, which we review for correctness, granting no deference to the trial court." *Pugh v. Draper City*, 2005 UT 12, ¶7, 519 Utah Adv. Rep. 9 (Utah 2005).

Vaughn has asked this Court to read the No-Fault statute as placing a burden on defendants, prior to trial, to prove that the plaintiff's medical expenses did not exceed the \$3,000 threshold. Vaughn contends that allowing a plaintiff to proceed to trial and then requiring him to bear the burden of proof that his medical expenses exceed the threshold conflicts with the purpose of "screen[ing] less-severe cases from the court system" because it allows a plaintiff to go through a "full-fledged civil trial" only to have his

claims for general damages rejected after the jury has heard all the evidence. (App. Brief at 9.) Contrary to Vaughn’s argument, §309(1)(a) does not preclude the jury from hearing evidence on special damages, including medical expenses; it merely precludes a plaintiff from maintaining a cause of action for general damages unless it is proven that his medical expenses exceeded \$3,000.

Vaughn has proposed that the Court read §31A-22-309(1)(a) (hereinafter “§309(1)(a)”) in conjunction with §31A-22-307(2)(e) (hereinafter “§307(2)(e)”) and interpret those sections as precluding a jury instruction on the threshold issue. However, this interpretation of the statute conflates two provisions that serve different purposes and would shift the burden of proof to defendants to prove that a plaintiff’s medical expenses have not exceeded threshold before trial begins.

First, §307(2)(e) and §309(1)(a) serve two distinct purposes within the overall no-fault scheme. The purpose of §307(2)(e) is to ensure that an injured party receives immediate and fair compensation for his medical expenses when a dispute arises between an insured and his no-fault insurer. By comparison, the purpose of §309(1)(a) is to prevent vexatious lawsuits to recover relatively minor damages by requiring plaintiffs to incur more than \$3,000 in reasonable medical expenses before maintaining a cause of action. Finally, the no-fault statutory scheme does not place the burden on the defendant to disprove plaintiff’s claims.



**A. Sections 31a-22-307 and 31a-22-309 Serve Different Purposes under the No-fault Statutory Scheme**

The no-fault statutory scheme has more than one purpose and it employs §307(2)(e) differently than §309(1)(a) in order to effectuate those different purposes. As noted by the Utah Supreme Court in *Prince*, “Utah’s No-Fault Automobile Insurance Act has two primary components: “(1) no-fault PIP insurance coverage, and (2) partial tort immunity from certain PIP-typed claims for tortfeasors.” 2002 UT 68, ¶15, 56 P.3d 524; *see also Bear River Mut. Ins. Co. v. Wall*, 1999 UT 33, 978 P.2d 460 (Utah 1999) (distinguishing between the two purposes of the no-fault statutes); *Allstate Ins. Co. v. Ivie*, 606 P.2d 1197, 1199 (Utah, 1980) (“The Utah no-fault statute is a compulsory, partial tort exemption law coupling no-fault insurance benefits [] with a partial elimination of tort claims for bodily injury.”). Even the cases cited by Vaughn do not support the conclusion that §307(2)(e) and §309(1)(a) were intended to serve the single purpose of preventing smaller cases from clogging up the courts. *See George v. Welch*, 997 P.2d 1248, 1251 (Colo. Ct. App. 1999) (noting that the purpose of the threshold requirement is distinguishable from the overall purpose of the no-fault act); *Montgomery v. Daniels*, 340 N.E.2d 444, 446 (N.Y. 1975) (“One prong [of the no-fault statute] deals with compensation; the other with limitation of tort actions.”); *Creswell v. Medical W. Community Health Plan*, 644 N.E.2d 970, 971 (Mass. 1995) (The three purposes of the no-fault statute are “to reduce the number of small motor vehicle tort cases being entered in the courts of the Commonwealth, to provide a prompt, inexpensive means of

reimbursing claimants for out-of-pocket expenses, and to address the high cost of motor vehicle insurance in the Commonwealth.”); *Dairyland Ins. Co. v. Starkey*, 535 N.W.2d 363, 365 (Minn. 1995) (“no-fault automobile insurance laws are intended to relieve the economic distress of uncompensated victims;” “to prevent overcompensation and provide offsets to avoid duplicate recovery;” “[to] speed the administration of justice and ease the burden of litigation on the courts;” “and place the claimants in the same position they would have been in had the tortfeasor had liability insurance”).

**1. The purpose of § 31A-22-307(2)(e) is to provide a procedure for determining the reasonable value of medical expenses when a dispute arises between an insured and his PIP insurer**

Section 31A-22-307(2)(e) addresses the PIP coverage component of the no-fault statutory scheme by providing a procedure to determine the reasonable value of medical expenses in dispute between an insured and his own no-fault carrier. Utah Code Ann. § 31A-22-307(2)(e); see *Versluis v. Guaranty Nat'l Cos.*, 842 P.2d 865, 867 (Utah 1992) (“PIP benefits are intended to provide immediate compensation for out-of-pocket expenses and actual loss of earnings incurred as a result of an accident without having to bring a lawsuit.”). This subsection must be read in light of the overall purpose of §31A-22-307 which describes “the parameters of an insurer’s obligations concerning personal injury protection coverages and benefits.” *Tucker v. State Farm Mut. Auto. Ins. Co.*, 2002 UT 54, ¶13, 53 P.3d 947 (Utah 2002). Reading §307(2)(e) in the context of §31A-22-307 demonstrates that §307(2)(e) was intended to function as a part of the PIP-coverage component of the no-fault statutory scheme and is consistent with the general purpose of

PIP coverage, namely, “to ensure that insurance companies provide immediate minimal health benefits for covered individuals injured in automobile accidents.” *See Prince*, 2002 UT 68, ¶17, 56 P.3d 524 (citing *Regal Ins. Co. V. Bott*, 2001 UT 71, ¶11, 31 P.3d 524).

**2. The purpose of §31A-22-309(1)(a) is to require plaintiffs to incur more than \$3,000 in reasonable medical expenses before maintaining a cause of action**

On the other hand, §31A-22-309(1)(a) addresses the second component of the no-fault scheme, “to preclude vexatious lawsuits against tortfeasors to recover relatively minor damages.” *Prince*, 2002 UT 68, ¶17, 56 P.3d 524; *see also Jepson v. Department of Corrections*, 846 P.2d 485, 487 (Utah Ct. App. 1993) (stating that §31A-22-309 “merely prescribes certain threshold requirements to be satisfied in order to maintain a personal injury cause of action.”). Just as §307(2)(e) does not address limitations on a plaintiff’s right to maintain a cause of action, §309(1)(a) does not address the purpose of ensuring that injured parties receive compensation from their no-fault carriers. These two provisions are both part of the no-fault statutory scheme; however, they serve entirely different purposes within that scheme.

**B. The No-fault Statutory Scheme Does Not Place the Burden on the Defendant to Disprove Plaintiff’s Claims for Medical Expenses**

Furthermore, §307(2)(e) does not place a burden on a defendant in a third-party case to prove, before trial, that the medical expenses proximately caused by the accident did not exceed threshold. Reading §307(2)(e) to create a “pre-adjudicative screening

process” in third-party cases, as argued by Mr. Vaughn, would defeat the purpose of §309(1)(a) because it would allow plaintiffs to maintain a cause of action regardless of whether their medical expenses were “proximately caused” by the defendant’s negligence so long as they could show that the “reasonable value” of the medical services they received exceeded \$3,000.

Section 307(2)(e) reads, “In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and *testify on the issue of the reasonable value of the claimant’s medical expenses.*” Utah Code Ann. §31A-22-307(2)(e) (emphasis added). Because the panel of physicians is not authorized to testify as to proximate cause, medical necessity or reasonableness of treatment, a plaintiff could completely avoid the threshold requirement by simply continuing to receive treatment long after it was medically necessary in order to accumulate reasonably valued medical expenses in excess of \$3,000. However, §309(1)(a) requires plaintiffs to not only demonstrate that they had received \$3,000 worth of medical services, but also that those medical services were proximately caused by the defendant’s negligence. *See* Utah Code Ann. §31A-22-309(1)(a) (claims must arise “out of personal injuries alleged to have been caused by an automobile accident”). Any other reading of this statute would undermine the purpose of precluding vexatious lawsuits and would increase litigation and insurance costs.

In this case Vaughn offered evidence that his medical expenses exceeded the \$3,000 threshold . (See App. Brief at 5.) However, the jury ultimately decided that while Vaughn may have incurred such expenses, the medical expenses related to the accident with Anderson did not exceed \$3,000. (R. at 202.) This was the correct result and the jury did not commit clear error because §309(1)(a) does not ask if a person has spent more than \$3,000 in medical bills, but rather whether a person incurred more than \$3,000 as a proximate result of the automobile accident.

Furthermore, Vaughn’s proposed interpretation would unjustifiably shift the burden of proof to the defendant by requiring the defendant to disprove the plaintiff’s claimed medical expenses before even going to trial. Contrary to Vaughn’s assertion that the no-fault statute creates “an additional burden of proof for plaintiffs,” the burden of proving a claim for damages has always rested on the plaintiff. (See App. Brief at 9); *see also Bennion v. Le Grand Johnson Constr. Co.*, 701 P.2d 1078, 1084 (Utah 1985) (plaintiffs had the burden of proving their damages).

Even assuming that §307(2)(e) were to apply in third-party cases, it would not shift the burden to the defendant to disprove the plaintiff’s claim because it is a purely discretionary provision that uses the discretionary language “may” instead of mandatory language like “shall” or “must.” *See Burns Chiropractic Clinic v. Allstate Ins. Co.*, 851 P.2d 1209, 1212 (Utah Ct. App. 1993). (“It merely allows a court, in its discretion, to designate a panel of medical experts to testify at a hearing before the court on the issue of the reasonable cost of services.”).

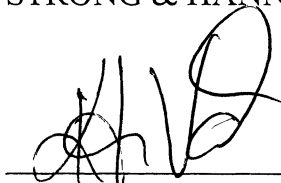
Because interpreting the no-fault statutes as proposed by Vaughn would ignore the multi-faceted purposes of the overall statutory scheme, would undermine the express purpose of §309(1)(a), and would unjustifiably shift the burden of proof to the defendant, the Court should affirm the trial court's interpretation of the no-fault statutes that allowed submission of the threshold issue to the jury after evidence of special damages had been adduced.

### **CONCLUSION**

This Court should affirm the decision of the trial court because the trial court committed no legal error, nor did it abuse its discretion regarding the admission of evidence. Judge Hilder's special verdict form on the threshold issue correctly and sufficiently advised the jury on the law. Judge Hilder did not abuse his discretion when he excluded evidence regarding Vaughn's PIP payments. Finally, Judge Hilder correctly interpreted the no-fault statutory scheme because Vaughn had the burden to prove that his medical expenses exceeded \$3,000 and the no-fault statutory scheme does not shift that burden to the defendant.

DATED this 22 day of March, 2005.

STRONG & HANNI

A handwritten signature in black ink, appearing to read 'K. VanOrman', is written over a horizontal line.

Kristin A. VanOrman  
Attorney for Appellee

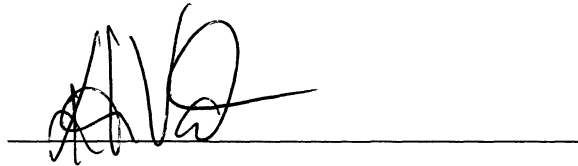
**ADDENDUM**

Utah Code Ann. §§31A-22-307 & 31A-22-309 are attached.

### **CERTIFICATE OF SERVICE**

I hereby certify that I mailed a copy of the foregoing Appellee's Brief via the United States Mail, postage prepaid, on this the 22 day of Mar, to the following:

Matthew H. Raty  
Law Office of Matthew H. Raty, P.C.  
480 East 400 South, Suite 200  
Salt Lake City, UT 84111

A handwritten signature in black ink, appearing to be "MHR", is written over a horizontal line.