

2004

Voi Aiono and Cheryl Aiono v. Kendall Hogan, State Farm Insurance and DOES 1 through 50, inclusive : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Brief of Appellant, *Voi Aiono v. Kendall Hogan, State Farm Insurance*, No. 20040769 (Utah Court of Appeals, 2004).
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IN THE UTAH COURT OF APPEALS

.A10
DOCKET NO. 20040769-CA

VOI AIONO and CHERYL AIONO,)	CASE NO. 20040769 CA
)	
Plaintiffs/Appellants,)	
)	
vs.)	
)	
KENDALL HOGAN, STATE FARM)	
INSURANCE, and DOES 1 through)	
50, inclusive,)	
)	
Defendants/Appellees.)	

BRIEF OF APPELLANTS

**APPEAL FROM THIRD DISTRICT COURT, SALT LAKE COUNTY,
JUDGE JUDITH S. H. ATHERTON**

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Kendall Hogan and State Farm Insurance

FILED
UTAH APPELLATE COURTS
FEB 07 2005

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BRIEF OF APPELLANTS

JURISDICTION

This Court has jurisdiction pursuant to § 78-2a-3(2)(j).

ISSUES PRESENTED AND STANDARD OF REVIEW

1 Whether the trial court erred by granting Kendall Hogan's Motion for Summary Judgment.

Standard of Review: “[The Court of Appeals] reviews] the district court’s order granting . . . summary judgment for correctness and accord no deference to the district court’s legal conclusions. [Citations omitted.] [The Court of Appeals] view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party.” *Brigham Young University v. Tremco Consultants, Inc., aka Tremco Legal Solutions*, 2005 UT 10.

Citation to Record: Order Granting Summary Judgment (R. 71-72)

2. Whether the trial court erred by denying Aionos' Motion to Amend their complaint.

Standard of Review: Because the trial court denied plaintiffs/appellants' motion to amend their complaint in the same order it granted defendants/appellees' motion for summary judgment, the Court of Appeals applies an "'abuse of discretion' standard and 'analyze[s] each of the trial court's reasons for denying [the] motion to amend in light of rule 15's liberal standard,' despite the fact that one of its reasons was that 'joining the [defendant] would be futile [because the statute of limitations had run.]" *Gary Porter Construction v. Fox Construction, Inc.*, 2004 UT App 354.

Citation to Record: Plaintiffs' Motion to Amend (R. 44-45); plaintiffs' Memorandum in Support of Motion to Amend or for Additional Time (R. 46-48); and plaintiffs' Reply Memorandum in Support of Motion to Amend (R. 56-58).

3. Whether the trial court erred by denying Aionos' Alternative Motion for Additional Time.

Standard of Review: Where a trial court may exercise broad discretion, the Court of Appeals presumes the correctness of the court's decision absent 'manifest injustice or inequity that indicates a clear abuse of . . . discretion.' *Hansen v. Hansen*, 736 P.2d 1055 (Utah App.1987).

Citation to Record: Plaintiffs Motion to Amend; or in the Alternative Motion for

Additional Time (R. 44-45)

4. Whether the trial court erred by dismissing Aionos' complaint in toto when State Farm was not a movant in Kendall's Motion for Summary Judgment.

Standard of Review: "Because summary judgment, by definition, decides only questions of law, [the Court of Appeals] review[s] the trial court's conclusions of law for correctness. [The Court of Appeals] give[s] no deference to the trial court's determination of issues on summary judgment. *Callahan v. Sheaffer*, 877 P 2d 1259 (Utah Ct App 1994)

Citation to Record: plaintiffs' Reply Memorandum in Support of Motion to Amend (R. 56-58); Kendall Hogan's motion for summary judgment (R. 41-43); and Kendall Hogan's memorandum in support of motion for summary judgment. (R. 28-40)

DETERMINATIVE STATUTES AND RULES

Utah Code Ann. § 78-12-40 [1992]; Utah Code Ann. § 78-12-25 [1992]; Utah Code Ann. § 31A-22-201 [1985]; Utah Code Ann. § 31A-22-301(5) [2003]; Utah Code Ann. §§ 31A-22-303 to 304 [2003]; Utah Code Ann. § 31A-22-303(1)(a)(ii) [2003]; and Utah Rules of Civil Procedure, Rules 15(a) and (c) and 56(c) and (f).

STATEMENT OF THE CASE

The auto accident giving rise to the cause of action by appellants occurred on July 18, 1996. (R. 1-6) A complaint was filed in the Third District Court, Murray Department, on

or about July 14, 2000 in Case No. 000206066.¹ (Addendum, Appendix 1) On March 12, 2002, this case was dismissed by the Third District Court, Murray Department, for failure to prosecute the action. (Addendum, Appendix 1) On or about March 10, 2003, appellants filed their complaint against appellees. (R. 1-6) On July 8, 2003, Voi Aiono and Cheryl Aiono ("Aionos") filed a Rule 6(b) motion for enlargement of time (for 60 additional days) to serve appellees, which was granted by the Court. (R. 7-10 & 11-12) On August 3, 2003, Kendall Hogan ("Kendall") was served (R. 14-15) and through his insured filed and answer and jury demand on November 10, 2003. (R. 17-21) On January 30, 2004, the parties filed their stipulated discovery plan. (R. 22-24) On April 5, 2004, a motion for summary judgment was filed which only named Kendall as the party to the summary judgment; State Farm Insurance was not and never named as a party seeking summary judgment. (R. 41-43) Kendall's memorandum in support of motion for summary judgment also failed to mention defendant State Farm Insurance. (R. 28-40) On April 15, 2004, appellants filed a motion to amend; or in the alternative motion for additional time and an accompanying memorandum in support. (R. 44-45 & 46-48) On April 26, 2004, Kendall filed an opposition to plaintiff's motion to amend; or in the alternative motion for additional time

¹Addendum, Appendix 1, is a certified copy from the Clerk of the Third District Court, signifying that an action had been filed on July 14, 2000 (prior to the expiration of the four-year statute of limitations) by Voi Aiono and Cheryl Aiono, plaintiffs, against Kendall Hogan and State Farm Insurance, defendants, Case No. 000206066. As can be seen, these are the identical parties to those in the present case. That case was dismissed March 12, 2002, for lack of prosecution (not on the merits); hence, § 78-12-40, U.C.A., applies.

(R. 49-55) which was replied to by memorandum on May 14, 2004. (R. 56-58) On August 3, 2004, the trial court entered an order granting summary judgment and further ordered that plaintiffs' complaint "is hereby dismissed" even though no summary judgment was sought for defendant State Farm Insurance. (R. 71-72)

STATEMENT OF FACTS

1. The auto accident giving rise to the cause of action by appellants occurred on July 18, 1996.

2. In the police report of the accident (exhibit B to the answer) (R. 17-21 - which does not appear to include the exhibits for the record) under the Teresa Peterson portion of such report, Teresa was listed as the driver and State Farm Insurance was listed as the insurance company with an expiration date of August 28, 1996. This police report is included in the Addendum, Appendix 2.

3. A complaint was filed in the Third District Court, Murray Department, on or about July 14, 2000 in Case No. 000206066. In that complaint, State Farm Insurance was named as a separate defendant. (Addendum, Appendix 1)

4. On March 12, 2002, this case was dismissed by the Third District Court, Murray Department, for failure to prosecute the action. This dismissal was not on the merits. (Addendum, Appendix 1)

5. On or about March 10, 2003, Aionos filed their complaint in the Third District Court against appellees, again naming State Farm Insurance as a defendant, separate and

apart from Kendall, based upon 1st party liability. The complaint listed two paragraphs concerning Doe defendants, alleging that these defendants were the agents of each other.

(R. 1-6)

6. On July 8, 2003, Aionos filed a Rule 6(b) motion for enlargement of time to serve appellees. This motion for enlargement was timely and requested 60 additional days to serve appellees. (R. 7-10)

7. On July 9, 2003, the trial court granted Aionos' Rule 6(b) motion, allowing appellants 60 days to serve appellees. (R. 11-12))

8. On August 3, 2003 and within the 60-day period, Kendall was served. (R. 14-15)

9. On or about November 10, 2003, Kendall filed an answer and jury demand. (R. 17-21)

10. On January 30, 2004, the parties filed their stipulated discovery plan. (R. 22-24) All fact discovery was to be completed by July 1, 2004 and amendments to pleadings had to be filed by July 1, 2004. (R. 22-24)

11. On April 5, 2004, prior to the discovery cutoff date of July 1, 2004 (R. 22-24), Kendall filed a motion for summary judgment only naming Kendall as the party to the summary judgment; no similar motion for summary judgment was filed in behalf of State Farm Insurance and it was not named as a party seeking summary judgment. (R. 41-43)

12. Kendall's memorandum in support of motion for summary judgment also failed

to mention defendant State Farm Insurance as a party seeking summary judgment. (R. 28-40)

13. On April 15, 2004, Aionos filed a motion to amend; or in the alternative motion for additional time seeking to amend their complaint in order to name Teresa R. Peterson, the driver, as an additional defendant. (R. 44-45)

14. On April 15, 2004, Aionos also filed a memorandum in support of motion to amend or for additional time. (R. 46-48)

15. On April 26, 2004, Kendall filed an opposition to plaintiff's motion to amend; or in the alternative motion for additional time. (R. 49-55)

16. On May 14, 2004, Aionos filed a reply memorandum in support of their motion to amend. (R. 56-58)

17. On August 3, 2004, the trial court entered an order granting summary judgment and further ordered that plaintiffs' complaint "is hereby dismissed" even though no summary judgment was sought for or in behalf of defendant State Farm Insurance. (R. 71-72)

SUMMARY OF ARGUMENT

An initial complaint was timely filed in the Third District Court, Murray Department on July 14, 2000, the auto accident ("accident") giving rise to the complaint occurring on July 18, 1996. This case was subsequently dismissed for lack of prosecution and an additional case was filed less than a year after the dismissal in the Third District Court. Both

complaints named State Farm Insurance (“State Farm”) as a separate and distinct defendant since it insured both plaintiffs and defendants. State Farm had a duty to not only defend Kendall but the driver of Kendall’s automobile, Teresa R. Peterson (“Teresa”), in this suit. *Speros v. Fricke*, 2004 UT 69, 98 P.3d 28. Because State Farm was notified of the pending action through letters from counsel and at the time of the suit being filed and served on Kendall, and because of State Farm’s obligation to defend Kendall and Teresa, State Farm’s knowledge concerning the lawsuit and the facts of the case should be imputed to Teresa, thereby giving her constructive knowledge of the suit and her role therein so Aiono’s amendment would not prejudice her and would relate back to the date of the filing of the original complaint. Both had the right to have State Farm defend them. “[A] person in privity with another . . . is a person so identified in interest with another that he represents the same legal right.” *Brigham Young University*, *supra*. In effect, Teresa was a co-insured of Kendall, having the same legal right as he does to be defended by State Farm. *See Speros*, *supra*. Therefore, since Teresa would not be prejudiced by the amendment, the trial court should have granted Aionos’ Motion to Amend the Complaint to include Teresa as an additional defendant due to the relation back effect. Under the requirements of Rule 56(f), the trial court should have allowed Aionos a continuance in order to engage in discovery concerning that facts of this case and to counter the affidavit of Kendall by State Farm’s knowledge imputed to Teresa. State Farm Insurance, as the insurer of the vehicle, was obliged to insure the driver in this accident. *Speros v. Fricke*, 2004 UT 69, 98 P.3d 28, 34-

40. *See also* Exhibit A to Kendall's Memorandum in Support of Motion for Summary Judgment, which is the affidavit of Kendall Hogan containing Exhibit B, a copy of the police report, first page of police report, naming State Farm Insurance as the insurer of Kendall's vehicle. (Addendum, Appendix 2) The record contains no statement by Kendall that Teresa should not have been covered by State Farm Insurance, since his affidavit does not address any facts whether Teresa ever drove with his knowledge. His affidavit seems to indicate the foreseeability of Ms. Peterson driving the vehicle owned by Kendall. (R. 33-34)

Because of it decree that there was no "unity of interest", the trial court erred by ruling that Aionos' Motion to Amend their complaint would not relate back to the date of the filing of the complaint and is time-barred. Finally, the trial court erred by dismissing Aionos' complaint in toto since Kendall's Motion for Summary Judgment was not brought in the name of defendant State Farm Insurance and no such judgment was sought for State Farm Insurance. Since State Farm Insurance is a party to Aionos' action, their action against State Farm Insurance should not have been dismissed.

ARGUMENT

POINT I

THE TRIAL COURT ERRED BY GRANTING KENDALL'S MOTION FOR SUMMARY JUDGMENT

In this case, this Court's standard of review is "for correctness and accord no deference to the [district] court's legal conclusions. In addition, [this Court] views] the facts

and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.” *Brigham Young University v. Tremco Consultants, Inc., aka Tremco Legal Solutions, Inc.*, 2005 UT 10. The complaint named Kendall Hogan, State Farm Insurance, and Does 1 through 50, inclusive, as defendants. (R. 1-6) State Farm Insurance was the insurer of plaintiffs and defendants and, as such, owed a duty to plaintiffs to deal fairly with them and act in good faith. (R. 1-6) The complaint then alleged that State Farm Insurance breached their duty of good faith and fair dealing with plaintiffs. (R. 1-6) Yet, the trial court dismissed the whole complaint, including State Farm Insurance, even though Kendall was the only movant for summary judgment. (R. 71-72) Aionos complaint against State Farm Insurance should not have been dismissed. Additionally, as will be developed herein, Aionos complaint should not have been dismissed against Kendall and the Doe defendants. Because of the dismissal with prejudice of Aionos’ complaint, it is apparent the trial court failed to view the facts in a light most favorable to the Aionos and failed to accord their complaint the deference that was due.

A. Kendall’s Affidavit Failed To Provide Any Basis For The Granting Of Summary Judgment

Kendall’s Motion for Summary Judgment was supposedly supported by his affidavit attached as an exhibit in his supporting memorandum. (R. 28-40) In that affidavit, Kendall admitted that “on July 18, 1996 [sic] that automobile was in possession and control of my son Jonathan who was then residing at the home of Teresa R. Peterson.” He also stated that “on July 18, 1996 [sic] I had not given Ms. Peterson permission to drive my 1981 Datsun

510 automobile”. (R. 33-34) Since Kendall authorized his son to have the possession and control of his Datsun and his son lived with Teresa, it was entirely foreseeable that Teresa would be driving the Datsun on that date and other dates. Kendall’s affidavit fails to state that he had no knowledge of her driving the 1981 Datsun 510 automobile on July 18, 1996.

The facts of the present case are remarkably similar to the facts in *Speros v. Fricke*, 2004 UT 69, 98 P.3d 28. There, a Jeep automobile owned and driven by Fricke was involved in an accident. Fricke, who was driving, was found not negligent. Prior to the accident, she had given a ride to Hiatt, who was a passenger in the automobile at the time of the accident. While riding in the car, passenger Hiatt asked Fricke to take him to her house (they had just left a nightclub together). An argument ensued and shortly “after passing the road to Fricke’s home, Hiatt suddenly and without warning reached over and grabbed the Jeep’s steering wheel.” Consequently, “the Jeep veered into oncoming traffic and crashed into a Honda Civic driven by Ted Speros, injuring him.” In a subsequent suit, Nationwide, Fricke’s insurer, defended the claims against itself and Fricke, but refused to defend Hiatt. A default judgment was entered against Hiatt.

Nationwide argued it had no duty to defend Hiatt because he was not a permissive user and was further excluded from coverage because of the intentional acts inclusion in the policy of insurance. The trial court agreed with Nationwide and held that Speros’ insurer, West American, lacked standing to proceed directly against Nationwide because of a “lack of privity of contract between the parties”. The trial court also ruled that Hiatt was not a

permissive user within the terms of Nationwide's policy. The Utah Supreme Court stated that "West American's right to obtain reimbursement from Nationwide for the property damage and rental car expense payments it made to Speros is governed by the principles of equitable subrogation", citing § 31A-22-201, U.C.A., as authority. The Supreme Court then stated that West American "must establish that the damages arising from Hiatt's actions were covered by the Nationwide policy".

In response to Nationwide's argument that Hiatt was not a permissive user, the Supreme Court stated that the "issue turns on whether the term 'permission' contemplates coverage for the actions of a person permitted to use a car generally, or rather is limited to those persons who have permission to take the particular actions immediately giving rise to liability". Nationwide further argued that Hiatt's grabbing and turning the steering wheel disqualified him from permissive user status under the terms of their policy. In declining Nationwide's argument, the Supreme Court stated:

The controlling statutory language does not limit permissive users to those who are given permission to drive or 'operate' a vehicle. 'Operator' is a defined term under the statute. *See* Utah Code Ann. §§ 31A-22-301(5), 41-12a-103 (8) [2003]. However, the legislature chose not to use this term to describe the mandatory coverage at issue here. While the legislature could have required liability policies to cover permissive 'operators,' it chose instead to mandate coverage for permissive 'users.' We are persuaded that the legislature selected the term 'user' advisedly and with the intention that it apply more broadly than the term 'operator.' [Citations omitted.]

Our interpretation of 'permissive user' is also supported by a related provision of the insurance code. The code prevents an insurer from withdrawing the coverage it is required to extend to permissive users on the basis that the permissive user was at fault in causing an accident. *See* Utah

Code Ann. § 31A-22-303 (1)(a)(iii)(A) [2003]. *Our interpretation prevents insurers from frustrating this provision by categorizing as unauthorized those actions giving rise to fault.* [Emphasis added.]

Practical considerations also support our reading of the statutory language. The construction proposed by Nationwide would give rise to circumstances *where a person using someone else's vehicle could move in and out of the zone of permissiveness from moment to moment. Such an interpretation would spawn fact-dependent disputes over whether, at the relevant moment(s), a user had permission to undertake the particular action(s) that caused an accident.* [Emphasis added.] For example, the typical automobile owner does not authorize permissive users to exceed speed limits, run red lights, drive recklessly, or engage in any negligent or ill-advised actions. Under the interpretation urged by Nationwide, a person driving someone else's automobile with permission, but without permission to act negligently, would find himself without liability coverage. . . .

Id. at 35-36.

Kendall's affidavit specifically states that Teresa was not given permission to drive his automobile on July 18, 1996. (R. 33-34) Its silence regarding any other days assumes she had permission to drive his automobile on days other than July 18, 1996. Such attempts to disqualify Teresa from coverage on the day in question are tantamount to allowing Teresa to "move in and out of the zone of permissiveness from moment to moment". Such interpretation is clearly adverse to the ruling of the Utah Supreme Court in *Speros v. Fricke*, and the applicable above-cited Utah statutes.

The Supreme Court then discussed Nationwide's argument that Hiatt should not be covered because of the "intentional acts" exclusion. Even though the complaint in the present case alleged no intentional acts, what the Supreme Court stated in this regard is apposite to the present case. Nationwide argued that Hiatt's intentionally grabbing the

steering wheel thereby changing the Jeep's direction of travel into an oncoming car made him ineligible for their coverage. The Supreme Court disagreed:

The Utah legislature has enacted a comprehensive statutory scheme mandating minimum liability coverage for motor vehicles. 'See *id.* §§ 31A-22-303 to 304. This legislative enactment reflects a public policy requiring vehicle owners to carry a minimum level of liability coverage to protect innocent victims of automobile accidents. In the case of an owner's liability policy, the statute requires that the policy insure the person named in the policy and any permissive users 'against loss *from the liability imposed by law* for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada . . . in [dollar] amounts not less than the minimum limits specified. *Id.* § 31A-22-303(1)(a)(ii) [Emphasis in original.]

The statute recognizes no distinction between liability arising out of negligent acts and liability arising out of intentional acts; it simply requires coverage for all liabilities imposed by law. Because the law imposes liability for damages caused by negligently *and* intentionally, we conclude that the statute requires coverage of liability arising out of intentional, as well as negligent, acts.

. . . . Accordingly, we hold that the intentional acts exclusion is enforceable against accident victims up to the minimum liability limits prescribed by the statute.

Our holding with respect to the limited validity of the intentional acts exclusion is consistent with our holdings regarding the validity of other exclusions in the arena of automobile liability coverage. In *Allstate Insurance Co. v. United States Fidelity & Guaranty Co.*, 619 P.2d 329 (Utah 1980), we considered the ***validity of a named driver exclusion*** to an automobile liability insurance policy. After then analyzing the then-applicable statutory scheme and concluding that the legislature had established a mandatory minimum liability coverage requirement for automobile insurance policies, we held that the exclusion was 'void in relation to the minimum level of liability coverage mandated' by statute. *Id.* at 333.

Similarly, in *Farmers Insurance Exchange v. Call*, 712 P.2d 231 (Utah 1985), we examined the validity of a policy provision that excluded coverage

for bodily injury to members of the insured's household. We held that the exclusion contravened the statutory requirement mandating minimum benefits that must be provided to all persons sustaining personal injuries in automobile accidents. . . . We concluded that it 'would be anomalous if the rights of innocent accident victims, for whose protection the Utah No-Fault Act was adopted, could be defeated by private agreements. *Id.* at 235. [Emphasis added.]

Id. at 36-38.

These citations from *Speros v. Fricke* clearly demonstrate that the attempt by Kendall in his affidavit to disqualify Teresa from coverage by State Farm Insurance are contrary to the above-cited statutes and the holdings in *Speros v. Fricke*. To now hold otherwise would abrogate the rights of the Aionos, the innocent victims of Teresa's negligence. At a minimum, Aionos are entitled to the benefit of the Utah No-Fault Act and to that Act's requirement mandating that they receive minimum benefits. Consequently, the trial court erred by granting summary judgment against Aionos based upon Kendall's affidavit since Kendall failed to demonstrate that he was entitled to summary judgment as a matter of law. By the authority of the above-cited statutes and *Speros v. Fricke*, State Farm had a duty to defend Teresa, thereby making her a permissive user, contrary to Kendall's assertions in his affidavit.

Rule 56(c), U.R.Civ.P., states that "[t]he judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admission on file, together with affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The trial court erred in granting

summary judgment. State Farm had a duty to defend Kendall and Teresa and its knowledge concerning the accident and the filing of the complaint because of the accident in which Teresa was involved as a driver should be imputed to Teresa thereby demonstrating that the amendment would not prejudice her and should relate back.

POINT II

THE TRIAL COURT ERRED BY DENYING AIONOS' MOTION TO AMEND THEIR COMPLAINT

Once confronted with Kendall's Motion for Summary Judgment, Aionos filed a motion to amend their complaint to include Teresa along with a supporting memorandum. (R. 44-45, 46-48) The trial court denied this motion in its Order Granting Summary Judgment. (R. 71-72)

Rule 15(a) indicates that "leave [to amend] shall be freely given when justice so requires." As indicated by the above-referenced Utah No-Fault Act and *Speros, supra*, justice requires that Aionos be compensated for their injuries as a result of the negligence of Teresa.

The Order Granting Summary Judgment stated that "Plaintiffs' Motion to amend Complaint is hereby denied as there is not a unity of interest between Defendant Kendall Hogan and the actual tortfeasor which would allow the relation back of the Amended Complaint to the previous filings of the Complaint. Accordingly, any amended complaint that would be filed by Plaintiff [sic] would be time barred by the statute of limitations set

forth pursuant to U.C.A. § 78-12-25 and § 78-12-40, respectively." In effect, the trial court ruled that it would be futile for Aionos to amend their complaint to include Teresa as a defendant even though the claim asserted in the amended pleading "arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading". Rule 15(c) states that the amendment relates back to the date of the original pleading "[w]henever the claim . . . asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading".

Aionos' amended complaint only sought to add Teresa as a party. Everything else would remain as alleged in the original complaint arising out of the accident of July 18, 1996. (R. 44-45 and memorandum in support R. 46-48) As such, the trial court erred by denying Aionos' Motion to Amend Complaint.

A. Notification Of The Lawsuit To State Farm Was Constructive Notice To Teresa So As To Satisfy The Requirement Of Rule 15(c)

In *Gary Porter Construction v. Fox Construction, Inc.*, 2004 UT App 354, ¶ 34, regarding the application of Rule (c) to add new parties, the Utah Court of Appeals stated:

. . . The Court recognized that rule 15(c) generally does 'not apply to an amendment which . . . adds new parties' because if it did, 'the purpose of a statute of limitations would be defeated,' but also recognized that 'a mechanical use of a statute of limitations [should not] prevent adjudication of a claim' where 'new and old parties have an identity of interest; so it can be assumed or proved the relation back is not prejudicial. [*Doxey-Layton*, 548 P.2d 902, 906 (Utah 1976)] 'Such is particularly valid where . . . the real parties in interest were sufficiently alerted to the proceedings, or were involved in them unofficially, from an early stage.' *Id.* Where a new party had sufficient notice that it would have been a proper party to the original pleading, the purpose of the statute of limitations is not defeated by applying

the relation back doctrine to deprive the new party of its statute of limitations defense.

The Court of Appeals, in quoting *Perry v. Pioneer Wholesale Supply Co.*, 681 P.2d 214 (Utah 1984), referenced the fact that the Utah Supreme Court, in *Perry*, outlined a test for "identity of interest": "[W]hen 'the parties are so closely related in their business operations that notice of the action against one serves to provide notice of the action to the other.'" *Id.* at ¶ 35. After *Perry*, this court stated that *the notice for relation back could be actual notice or constructive notice*. This court further stated: "No matter how the formal test is articulated, what is crucial is that at an adequately early stage of the litigation, the new party was 'sufficiently on notice of the facts and claims that gave rise to the proposed amendment.'"

This court in *Gary Porter Construction*, cited two cases where it had permitted relation back "where the new party had sufficient actual notice that it would have been a proper party under the original pleading. In *Hebertson v. Bank One, Utah, N.A.*, 1999 UT App 342, 995 P.2d 7, this court stated that relation back would be proper where the new parties (1) had actual notice of the original pleading, which clearly described an injury that had occurred at the time the new parties owned the property on which the injury had occurred, and (2) had the same insurer and attorney as the named party, . . ." *Id.* at ¶ 37.

In the instant case, Teresa was aware of the accident since she was the one involved. She was or should have been aware that Aionos were injured. Teresa was insured by State Farm as was Kendall and had the same attorney as Kendall and State Farm, i.e., as a result

of the *Speros* opinion. Consequently, a relation back to the date of the filing of the original complaint would not prejudice her. Again, the trial court erred by not granting Aionos' Motion to Amend.

The *Gary Porter Construction* court articulated a test in spite of terminological shifts for relation back under rule 15(c):

[W]hether (1) the amended pleading alleged only claims that arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading and (2) the added party had received (actual or constructive) notice that it would have been a proper party to the original pleading such that no prejudice would result from preventing the new party from using a statute of limitations defense that otherwise would have been available.

Id. at ¶ 40.

The *Gary Porter Construction* court then stated what is directly applicable to the present case and ignored by the trial court:

However, a consideration not addressed by the trial court but that could be relevant to imputing notice to a new party, is *whether it shared counsel with a named party prior to the running of the statute of limitations*. See *Hebertson v. Bank One, Utah, N.A.*, 1999 UT App 342, ¶ 19 n. 9, 995 P.2d 7 (considering having the same attorney and insurance carrier relevant to relation back analysis). [Emphasis added.]

Id. at ¶ 44.

In the instant case under the analysis of the *Speros* case, Teresa should be found to have imputed notice since she shared counsel with Kendall and had the same insurance carrier as Kendall. As a result of this imputed notice, Teresa would not be prejudiced by the relation back to the date of Aionos' original complaint; consequently, the trial court erred by not granting Aionos' Motion to Amend.

In *Korn v. Royal Caribbean Cruise Line, Inc.*, 724 F.2d 1397, 1399 (9th Cir.1984), the Court of Appeals stated that "Fed.R.Civ.P. 15(c) is the only vehicle through which a plaintiff may amend his complaint, after a statute of limitation period has run, to accurately name a defendant who was not correctly named in the pleading before the limitation period had run". Such applies to the instant case.

In *Korn*, Mr. Korn slipped and fell on the basketball court of the cruise ship M/S "Song of Norway," injuring his knee to the extent that he had to cut his cruise short and fly to California for knee surgery. His attorney eventually sued Royal Caribbean Cruise Line, Inc. (RCCL Inc.) and other doe defendants. Ultimately, Korn's attorney discovered, after the statute of limitations had run, that RCCL Inc. was not the owner of the vessel, only its marketing corporation. Korn then attempted to amend his original complaint to name the proper party defendant, Royal Caribbean Cruise Line A/S. The district court denied the motion.

The Ninth Circuit reversed the district court. It reiterated that the notice "required under Rule 15(c) could be either formal or informal so long as the party to be added was not prejudiced in maintaining its defense on the merits". *Id.* at 1399.

In finding that Royal Caribbean Cruise Line A/S (RCCL A/S) was not prejudiced because, among other particulars, of informal notice to it, the Ninth Circuit stated:

. . . . In the instant matter, only one person was injured in a fall on the basket ball court of the M/S "Song of Norway" that particular morning. Only one person was treated for knee injuries sustained in that fall and only one person subsequently curtailed his cruise, and that of his family, to fly from Puerto

Rico to California to undergo surgery. Most importantly, when the insurance company involved inquired into the facts surrounding this matter, only one person's claim was involved – that person was Julius Korn and his claim was the focal point of the investigation.

....

RCCL A/S should not be allowed to utilize Fed.R.Civ.P. 15(c) as a log to hide behind. CMA, RCCL A/S' agent for claims purposes, knew full well of the pending suit and had been notified that the complaint was filed before the expiration of the limitation period.

Id. at 1401.

The Ninth Circuit identified CMA as the insurer for the vessel's owner.

In the instant matter, Aionos were the only ones injured at the time of the accident. (R. 1-6) When State Farm inquired into the facts surrounding these injuries, only Aionos' claim was involved. Teresa was or should have been aware that she and the Aionos were involved in the accident on July 18, 1996. (R. 1-6) Correspondence was sent by Aionos' attorney to State Farm regarding the accident, reflecting that State Farm was fully aware of the accident and the identity of the persons injured. Again, since State Farm insured Kendall and Teresa and provided the attorney for both of them, State Farm had actual knowledge of the accident of July 18, 1996, and the driver driving its insured automobile; therefore, such knowledge should be imputed to Teresa.

See Craig v. Ludy, 95 Wn. App. 715, 719-20, 976 P.2d 1248 (1999) ["At least one federal court has held under this rule that notice may be imputed to parties who are represented by the same attorney." *Hendrix v. Memorial Hosp.*, 776 F.2d 1255, 1257-58 (5th

Cir.1985). "In this case, Mr. Ludy's insurer certainly had notice of this action. Presumably, counsel retained by the insurer to represent its insured would be required to defend the suit regardless of whether Mr. Ludy were alive or dead." *Id.* at 720.]

Kendall and Teresa were represented by the same attorney and State Farm certainly had notice of this action. Consequently, notice of the action should be imputed to Teresa and a relation back would not prejudice her.

In accord, Schwartz v. Douglas, 98 Wn. App. 836, 840, 991 P.2d 665 (2000) ["After receiving its copy of the complaint, the insurance carrier asked for an extension and did not notify the Schwartzes of Mr. Douglas' death until after the running of the statute of limitations. Counsel retained by the insurer would have been required to defend this suit whether Mr. Douglas or for his estate after he died. Due to this community of interest, the notice to the insurer is imputed to the estate."] In the instant case, counsel retained by State Farm would have been required to defend this suit for Kendall and Teresa. Therefore, notice to State Farm is imputed to Teresa. *In accord, Zimmer v. United Dominion Industries, Inc.*, (W.D.Ark.2000); *Pargman v. Vickers*, 438 Ariz. Adv. Rep. 13, 96 P.3d 571, 433 Ariz. Adv. Rep. 20 (Ariz.App. 2004) [Since the insurer had notice of the plaintiff's action and knowledge of the plaintiff's mistake of failing to name the real party in interest, an amended complaint could be allowed.]

In *Hamilton v. Blackman*, 915 P.2d 1210 (Alaska 1996), plaintiffs were in an auto accident where the driver of the other vehicle died. Plaintiffs submitted their claim to the

driver's liability insurer; however, before their claim became time barred, plaintiffs sued the deceased driver and served his wife as the estate's personal representative, even though she had never been appointed such by any probate court. *Id.* at 1212. The original defendant (the deceased driver) was represented by a law firm retained by the insurer that moved to dismiss asserting that plaintiffs failed to sue the proper party. *Id.* The trial court agreed and dismissed the case. However, the Alaska Supreme Court reversed. *Id.* at 1218, finding that plaintiffs were entitled to petition the probate court for the appointment of a personal representative and to move to amend their complaint to add the estate. The Alaska Supreme Court explained that the "touchstone" of the relation back doctrine was fairness. It also noted that it appeared that the driver's insurer had actual notice and knowledge of the lawsuit; therefore, the relation back requirements were met:

It is the Estate of William Blackmon, not State Farm, that [plaintiffs] will seek to bring into the case when they sue the estate's personal representative. As the estate has not yet been opened it could not have notice of the claim against it; it would therefore be impossible to satisfy the literal terms of Civil Rule 15(c). *However, State Farm is the only entity with exposure for damages liability as the result of [plaintiffs'] action. Under these circumstances, actual notice to State Farm suffices to meet the notice requirements of Civil Rule 15(c).* [Emphasis added.]

Id. at 1218 n. 12.

One of the most direct cases holding that knowledge to the insurer of the party to be added constitutes knowledge to such party is *Red Arrow Stables v. Velasquez*, 725 N.E.2d 110 (Ind.App.2000). In that case, Velasquez, an injured plaintiff, filed suit against the wrong group of Girl Scouts. When he became aware of his mistake, he moved to amend his

mistake to sue the right group of Girl Scouts, which motion was granted. The new party then twice filed motions for summary judgment on statute of limitations grounds, which motions were denied by the trial court. These rulings were appealed.

The Indiana Appellate Court then decided the issue of whether constructive notice to the added defendant is sufficient to satisfy the notice requirements of Trial Rule 15(c), stating, as follows:

Other jurisdictions addressing the issue of whether notice to a party's liability insurance carrier, by itself, is sufficient to allow relation back of an amendment have answered in the affirmative. In *Smith*, the plaintiff fell and suffered injuries while at Hardee's Restaurant. *Smith v. TW Service, Inc.*, 142 F.R.D. 144, 145 (M.D.Tenn.1991). Counsel for the plaintiff contacted the insurance adjusters for Hardee's, advising them of the accident and of counsel's representation of the plaintiff. *Id.* at some point, TW (Hardee's licensee) assumed the handling of plaintiff's claim, and plaintiff's counsel was advised to direct all future correspondence to the claims representative of the liability insurer for TW. *Id.* Approximately one week before the statute of limitations expired, plaintiff filed suit, naming only Hardee's as a defendant. *Id.* at 146. Despite naming only Hardee's as a defendant, plaintiff did mail TW's insurer a copy of the complaint. *Id.* at 145. After the statute of limitations had expired, plaintiff filed a motion to amend her complaint to add TW as a defendant. *Id.* at 146. *Because there was no dispute that the defendant to be added did not have actual notice of the lawsuit within the limitations period but that its insurer did, the only issue was whether the notice to the insurer was sufficient to fulfill the requirements for relation back under Rule 15(c) of the Federal Rules of Civil Procedure.* *Id.* at 147. In holding that plaintiff's motion to amend should be allowed to relate back to the date of the original complaint, the court noted that the plaintiff is only obligated to provide notice which is sufficient to prevent prejudice in the maintenance of a defense. *Id.* at 149.

'Intuitively, there is little prejudice to a defendant when his own liability insurer, who will likely be heavily involved in the defense, has notice of a suit within the limitations period. [The insurer] had full authority to investigate and settle the claim and would play a key role in the

impending litigation. This is not a so-called 'identity of interest' case, but there is still a substantial unity of interests between [the insurer] and [the added defendant] with respect to this litigation. *Id.*

We find the reasoning in *Smith* to be sound. In the instant case, Calumet Council was alerted to Velasquez's accident and her subsequent claim for medical expenses by December 1997 at the latest. By January 1998, St. Paul, the insurance carrier for Calumet Council, was aware that Velasquez had obtained counsel and was making a 'claim for damages.' Upon receipt of this information, St. Paul requested that Velasquez's counsel 'direct all future correspondence' to it. Approximately three weeks before the statute of limitations expired, Velasquez, acting through her attorney, filed suit, incorrectly naming the 'Girl Scout Corporation' as defendant rather than the 'Girl Scouts of Calumet Council.' Within days, Velasquez's attorney notified St. Paul of the impending suit by sending a copy of the complaint and summons, along with a letter that stated, 'Please find enclosed a file-stamped copy of the Complaint and Summons which were filed by our client against your insured in the above-named cause.' Although Calumet Council did not receive actual notice of the lawsuit until almost two months after the statute had run, its insurer, the entity with the 'right to investigate any claim or suit,' 'the right and duty to defend any claim or suit,' and 'the right to settle any claim or suit,' did receive notice of the lawsuit before the tolling of the statute. Accordingly, for the same reasons set forth in *Smith*, ***we hold that notification of the lawsuit to St. Paul was constructive notice to Calumet Council so as to satisfy the requirement of Trial Rule 15(c)(1); namely, that it received notice of the institution of the action such that it will not be prejudiced in the maintenance of its suit.*** [Emphasis added.]

Id. at 115-116.

In the instant case, State Farm was aware of the pending suit. It also had correspondence with Aionos' attorney. State Farm had the right to investigate the claim, the right and duty to defend the suit, and the right to settle any claim or suit, which it did not. State Farm was heavily involved in the defense of this suit. At the least, State Farm received notice of the filing of the suit prior to the expiration of the statute of limitations when

Kendall was served with Summons and Complaint. (R. 14-16) The instant case is analogous to the *Velasquez* case.

POINT III

THE TRIAL COURT ERRED BY DENYING AIONOS' ALTERNATIVE MOTION FOR ADDITIONAL TIME

In response to Kendall's Motion for Summary Judgment, Aionos filed a Motion to Amend; or in the Alternative Motion for Additional Time. (R. 44-45) Kendall's Motion for Summary Judgment was filed on April 5, 2004 (R. 28-43), three months prior to the discovery cutoff of July 1, 2004, set forth in the Stipulated Discovery Plan. (R. 22-25) Such was necessary to conduct discovery in order to respond to Kendall's Motion for Summary Judgment. (R. 44-45)

Rule 56(f), U.R.Civ.P., provides, "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just". The statements in Kendall's affidavit could only be controverted by additional discovery. The trial court denied this alternative motion.

The Stipulated Discovery Plan was not filed until January 30, 2004. Kendall's Motion for Summary Judgment was filed April 5, 2004. That gave Aionos only approximately two months to conduct discovery, where they would have had an additional

three months if Kendall's Motion for Summary Judgment had been filed after the discovery cutoff date. (R. 22-25, 28-43) In light of these facts, Aionos were not dilatory regarding discovery. Additionally, it would appear disingenuous for a Motion for Summary Judgment to be filed prematurely as governed by the terms of the Stipulated Discovery Plan.

Auerbach's, Inc. v. Kimball, 572 P.2d 376 (Utah 1977) is on point.

The granting of the motion for summary judgment was premature because Kimball's discovery was not then complete. It was the information sought in the proceedings for discovery, which Kimball claimed would infuse the issues with facts sufficient to defeat a motion for summary judgment, and sustain his counter-claim. Whether such would be the case cannot now be determined, because such facts, if they exist, were not allowed to be discovered.

When a motion is made opposing summary judgment, on the ground that discovery has not been completed, the court should grant a continuance or deny the motion for summary judgment; unless the motion in opposition is deemed dilatory or without merit.

Id. at 377.

Based upon the above-recited facts, Aionos' alternative motion for continuance was not dilatory. Consequently, the trial court erred by denying this alternative motion for continuance prior to its determining Kendall's motion for summary judgment.

POINT IV

THE TRIAL COURT ERRED BY DISMISSING AIONOS' COMPLAINT IN TOTO WHEN STATE FARM WAS NOT A MOVANT IN KENDALL'S MOTION FOR SUMMARY JUDGMENT

Kendall's motion for summary judgment listed him as the sole moving party even

though State Farm was listed as a defendant and claims were made in the complaint about the breach of its duty of good faith and fair dealing. (R. 1-6) State Farm was the insurer for plaintiffs and defendants. (R. 1-6) Yet, the order stated that "Defendant Kendall Hogan's Motion for Summary Judgment is granted". (R. 71) The order granting summary judgment ended with "[a]ccordingly, Plaintiffs' Complaint is hereby dismissed". (R. 72) The trial court erred by entering this order since only Kendall moved for summary judgment.

Rule 56(c), U.R.Civ.P., provides in part: "The judgment sought shall be rendered if the pleadings, . . . show that there is no genuine issue as to any material fact and that the *moving party* is entitled to judgment as a matter of law". [Emphasis added.]

Since State Farm was not a moving party, the trial court erred by dismissing entirely Aionos' complaint.

CONCLUSION

Based upon the above-cited cases, statutes, and argument, the trial court erred by granting Kendall's motion for summary judgment based upon the futility of a Rule 15(c) amendment to name Teresa as a party. Such decision should be reversed. State Farm was obliged to defend Teresa in this suit based upon the reasoning and holding of *Speros, supra*. The idea of permissive use for one day only (July 18, 1996) seems too pat, too convenient, too self-serving, and ignores the fact of foreseeability that with the automobile being in the possession of Jonathan Hogan who was living with Teresa, that she was a permissive user. The careful language of Kendall's affidavit supports this contention. No matter, the purpose

of the Utah No Fault Act is offended by this characterization of Teresa's use or lack thereof; and, according to *Speros*, such moment to moment zone of permissiveness should not be allowed in this case. Aionos should have their day in court and be allowed the opportunity to recover damages for their injuries. They should be granted the opportunity to amend their complaint to list Teresa as an additional party. Based upon the foregoing, she will not be prejudiced thereby and the amended complaint will relate back.

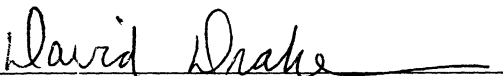
State Farm was obliged to represent Teresa. State Farm had ample notice prior to the filing of the suit that Teresa was the driver and it would have a duty to defend her. In fact, the police report (exhibit B to the answer) (R. 17-21 - which does not include the exhibits for the record) under the Teresa Peterson portion of such report, listed Teresa as the driver and State Farm Insurance was listed as the insurance company with an expiration date of August 28, 1996. At the time Kendall was served State Farm knew that (1) the suit against Kendall was filed within the statute of limitations; (2) that Teresa had not been named; (3) that Teresa was the driver; and (4) the suit was really concerning her liability as set forth in the Does allegations in the complaint. (R. 1-6) Consequently, State Farm's knowledge of the original filing of the complaint and the facts surrounding it should be imputed to Teresa so that an amendment to Aionos' complaint will not prejudice her, resulting in a relation back to the date of the filing of the original complaint. The trial court erred by not granting Aionos' motion to amend.

Aionos respectfully request that this Court reverse the decision of the trial court

whereby it granted Kendall's motion for summary judgment and denied Aionos' motion to amend and remand Aionos' case to the trial court, allowing the amendment and setting aside the summary judgment.

The trial court erred in not granting Aionos a continuance to conduct discovery pursuant to Rule 56(f). As such, the decision of the trial court should be reversed concerning their continuance motion and Aionos should be allowed to conduct discovery in this matter and proceed to trial.

RESPECTFULLY SUBMITTED this 4th day of February, 2005.


David Drake
Attorney for Plaintiffs/Appellants
Voi Aiono and Cheryl Aiono

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 5th day of February, 2005, a true and correct copy of the foregoing brief was mailed, first class postage prepaid, to the following counsel of record:

David N. Mortensen, Esq.
IVIE & YOUNG
226 West 2230 North, Suite 210
Provo, UT 84603

By: David Drake

ADDENDUM

- Appendix 1. CERTIFIED COPY OF DOCKET FROM THIRD DISTRICT COURT, MURRAY DEPARTMENT, SHOWING FIRST COMPLAINT DISMISSED FOR FAILURE TO PROSECUTE, CASE NO. 000206066
- Appendix 2. AFFIDAVIT OF KENDALL HOGAN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT WITH EXHIBITS FILED IN THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

Tab 1

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

CHERYL AIONO vs. STATE FARM INSURANCE

CASE NUMBER 000206066 Personal Injury

CURRENT ASSIGNED JUDGE
JOSEPH C. FRATTO

PARTIES

Plaintiff - VOI AIONO
Represented by: DAVID O DRAKE

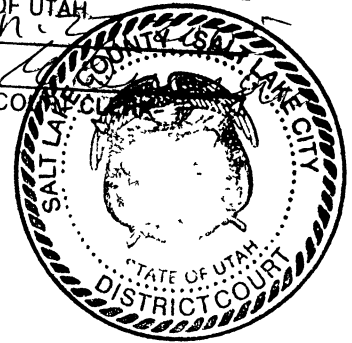
Plaintiff - CHERYL AIONO
Represented by: DAVID O DRAKE

Defendant - KENDALL HOGAN

Defendant - STATE FARM INSURANCE

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN
THE THIRD DISTRICT COURT, SALT LAKE
COUNTY, STATE OF UTAH.
DATE Jan 2

DEPUTY CLERK



ACCOUNT SUMMARY

CASE NOTE

PROCEEDINGS

07-14-00	Case filed by cristt	cristt
07-14-00	Judge FRATTO assigned.	cristt
07-14-00	Filed: AFFIDAVIT OF IMPECUNIOSITY	cristt
07-18-00	Filed: Aff. of Cheryl Aiaono of Impecuniosity Regarading Paymentof Filing Fee and Jury Demand.	ellens
07-18-00	Filed: Aff. of Impecuniosity Regarding Payment of Filing Fee and Jury Demand.	ellens
03-12-02	Case Disposition is Dismsd lack prosectn	maryl
	Disposition Judge is JOSEPH C. FRATTO	maryl
06-13-02	Note: Archived Physical File CV00012	maryl
06-13-02	Note: This file will be destroyed on 9/13/02 without further notation.	maryl

Tab 2

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

VOI AIONO and CHERYL AIONO,	:	AFFIDAVIT OF KENDALL HOGAN IN
	:	SUPPORT OF MOTION FOR SUMMARY
Plaintiffs,	:	JUDGMENT
vs.	:	
KENDALL HOGAN, STATE FARM	:	
INSURANCE, and DOES 1 through 50,	:	
inclusive,	:	Civil No.: 030905421
Defendants.	:	Judge Boyden

Kendall Hogan, upon his oath swears and avers as follows:

1. I am over the age of 18 and a resident of Utah County, and am of sound mind.
2. That on July 18, 1996 I was the co-owner of a 1981 Datsun 510 automobile.
3. That on July 18, 1996 that automobile was in possession and control of my son

Jonathan who was then residing at the home of Teresa R. Peterson.

4. That on July 18, 1996 I had not given Ms. Peterson permission to drive my 1981 Datsun 510 automobile.

5. That on July 18, 1996 I was not the driver of my 1981 Datsun 510 automobile when it was involved in a motor vehicle accident with Ms. Cheryl Aiono.

DATED AND SIGNED this 25 day of March, 2004.

Kendall Hogan
KENDALL HOGAN

STATE OF UTAH)
 ss:
County of Utah)

On the 25th day of March, 2004, personally appeared before me Kendall Hogan, the signer of the above Affidavit in Support of Motion for Summary Judgment, who acknowledged to me that he executed the same.

Amy A. Magill
NOTARY PUBLIC
Residing in: Utah City

My Commission Expires:

1-23-07

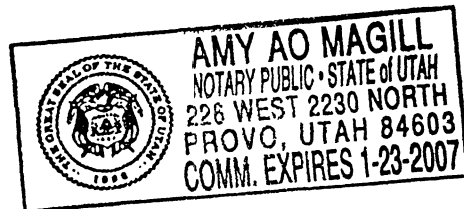


Exhibit B

SECTION WHICH HAPPENED BELOW

Reason For No Diagram

- 1 Officer not at scene
- 2 Vehicles moved
- 3 Other

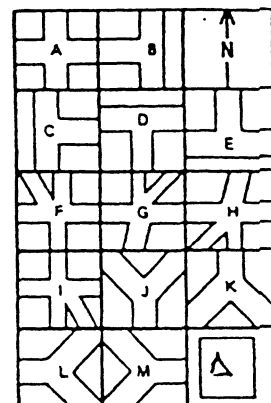
NUMBER 96 39014

VEHICLE NO 1 NO 2

1700 W. IN. DATE DIRECTION OF NORTH

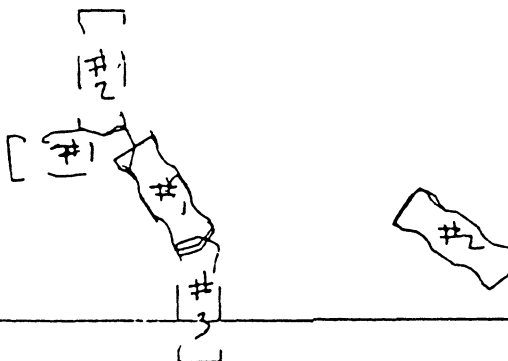


ESTIMATED TRAVEL SPEED	20	40
ESTIMATED IMPACT SPEED		
POSTED SPEED	35	40
ADVISORY SPEED	35	46



INDICATE INTERSECTION TYPE

3800 So.



DESCRIBE WHAT HAPPENED
(Refer to Vehicle by Number)

VEHICLE #1 WAS E/O ON 3800 So. APPROACHING 1700 W. TO MAKE A LEFT TURN. VEHICLE #1 WAS FACING A RED LIGHT. VEHICLE #2 WAS S/B ON 1700 W. IN THE #1 LANE. VEHICLE #3 WAS STATIONARY IN THE INTERSECTION WAITING TO TURN LEFT ONTO 3800 So. VEHICLE #1 ENTERED THE INTERSECTION ON THE RED TO MAKE THE TURN. VEHICLE #2 HIT #1 IN THE DRIVERS DOOR. #1 WAS TURNED S/B AND HIT #3 HEAD ON. NO SKIDS. THE ROAD WAS DRY.

If Hazardous Materials were involved list the placard number from off the commercial vehicle:

DAMAGE TO PROPERTY
OTHER THAN VEHICLES

Name object and state nature and amount of damage

ESTIMATE

Name and address of owner of object struck

WITNESSES

Name KELLY NATALIE NEFF Address 3816 LEB MAHR ST #4 Phone 955 7533
Name LEX WATSON Address 4901 S COTTONWOOD LN Phone 273 8789

FIRST AID ADMINISTERED BY

EMS REPORT NO

INJURED TAKEN BY

- 1 - Policeman
- 2 - Fireman
- 3 - Ambulance Personnel
- 4 - Paramedics
- 5 - Doctor
- 6 - Private Individual
- 7 - Hospital
- 8 - Helicopter Personnel
- 9 - None Administered
- 0 - Unknown

1

- 1- Ambulance, Private
- 2- Ambulance, Fire
- 3- Paramedics
- 4- Private Vehicle
- 5- Helicopter
- 6- Other

TIME: Amb. Called: Arrived:

INJURED TAKEN TO 404 COTTONWOOD

POLICE ACTIVITY

07 18 96
Month Day Year

Date Notified of Accident

2029

Time Notified of Accident

2039

Arrived at Scene

Investigation of accident Completed at

2250



the same day the day following

Source of Information

Officer at scene ☒
Driver No. Contacted station
Other

PHOTO(S) TAKEN YES ☐ NO ☒
VIDEO TAKEN YES ☐ NO ☒
FIELD DIAGRAM YES ☐ NO ☒

Name TERESA PETERSEN Charge: RED LIGHT

Name Charge:
CVSA Inspection Yes No ☒ If Yes, Report Number

Other action taken
PRINT D. TAYLOR 2107 TRAFFIC WUCPD Runkle 7/18/96
OFFICER'S RANK AND NAME I.D. NO. PATROL DIVISION DEPARTMENT SUPERVISORS APPROVAL DATE OF REPORT

State Law requires that report be forwarded to Dept. of Public Safety within 10 days following completion of the investigation. Mail ORIGINAL OF REPORT TO: Driver License Division Financial Responsibility Section 4501 South 2700 West • P.O. Box 30560 • Salt Lake City, Utah 84130-0560

X	I M E	MONTH DAY YEAR	DAY OF WEEK	1 2 3 4 5 6 7	M T W T F S S	MILITARY TIME	CASE NUMBER					
		07 18 96						96 39014				
2	X	PLACE WHERE ACCIDENT OCCURRED: COUNTY <u>SALT LAKE</u> <u>35</u> CITY OR TOWN <u>WEST VALLEY</u>					FOR AGENCY USE					
		Accident was outside city limits indicate distance from city limits or nearest town _____ MILES <input type="checkbox"/> NORTH <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W <input type="checkbox"/> of _____ CITY OR TOWN _____					REPORTABLE					
X	L O C A T I O N	ROAD ON WHICH ACCIDENT OCCURRED. <u>1700 WEST</u> RAMP NO. _____					D.L.D. USE ONLY					
		1. AT ITS INTERSECTION WITH <u>3800 SOUTH</u> INTERSECTION TYPE _____										
X		2. IF NOT AT INTERSECTION _____ FEET <input type="checkbox"/> NORTH <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W <input type="checkbox"/> of _____ NEAREST INTERSECTION, STREET HOUSE NO. LANDMARK _____ BE SURE TO COMPLETE IF ROAD HAS MILE POST					STATE/LOCAL					
		TENTH OF A MILE _____ OF MILE POST _____										
X	VEHICLE	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)			
	3	94	Mazda	PBX	42 02	WHITE	X		INTERSTATE <input type="checkbox"/> INTRASTATE <input type="checkbox"/>			
X	VEHICLE IDENTIFICATION NUMBER <u>JM1BG2241R0725278</u>					DISPOSITION OF VEHICLE CODE <u>3</u>		NO. OF AXLES (INCLUDING ALL TRAILERS) DIR OF TRAVEL				
								NORTH				
X	US DOT	LICENSE	YEAR	MONTH	STATE	NUMBER	PARTS DAMAGED	INJURY	COST OF REPAIR			
	X	PLATE INFO	96	11	UT	915 HHS	1,2,3	3	2500.00			
X	OWNER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.					PHONE ()		
	OPERATOR	KARE		HOLDER	1780 W 3870 S #C306					978 9541		
	CARRIER				WVC UT 84119							
X	DRIVER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.					PHONE ()		
	KARANN			HOLDER								
X	DRIVER'S LICENSE	STATE	NUMBER	DATE OF BIRTH	MONTH	DAY	YEAR	AGE	SEX	SAFETY EQUIP	INJURY	THROUGH WHAT AREA EJECTED?
	UT	148321564	09	05	68							
X	DRIVER'S EDUCATION	1. PUBLIC 2. COM'L	3. NONE 4. UNKN	YEARS DRIVE EXP.	LICENSE CLASS	ENDORSEMENT	RESTRICTIONS					
				11	D	X	A					
X	INSURANCE COMPANY		EFFECTIVE DATE		EXPIRATION DATE		POLICY NUMBER					
	FARMERS INS		01/10/96		4		70140193381					
X	INSURANCE APPEARS VALID		AGENCY THAT SOLD POLICY		ADDRESS		PHONE ()					
	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		DANIEL MURRAY				569 2886					
X	VEHICLE	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)			
									INTERSTATE <input type="checkbox"/> INTRASTATE <input type="checkbox"/>			
X	VEHICLE IDENTIFICATION NUMBER					DISPOSITION OF VEHICLE CODE		NO. OF AXLES (INCLUDING ALL TRAILERS) DIR OF TRAVEL				
X	US DOT	LICENSE	YEAR	MONTH	STATE	NUMBER	PARTS DAMAGED	INJURY	COST OF REPAIR			
		PLATE INFO						3				
X	OWNER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.					PHONE ()		
	OPERATOR											
	CARRIER											
X	DRIVER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.					PHONE ()		
X	DRIVER'S LICENSE	STATE	NUMBER	DATE OF BIRTH	MONTH	DAY	YEAR	AGE	SEX	SAFETY EQUIP	INJURY	THROUGH WHAT AREA EJECTED?
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X	INSURANCE COMPANY		EFFECTIVE DATE		EXPIRATION DATE		POLICY NUMBER					
X	INSURANCE APPEARS VALID		AGENCY THAT SOLD POLICY		ADDRESS		PHONE ()					
	YES <input type="checkbox"/> NO <input type="checkbox"/>											
X	1. PEDESTRIAN		2. BICYCLIST		DATE OF BIRTH		AGE		SEX	INJURY		
										TYPE CAUSE AREA		
X	NAME					ADDRESS						
X	3 13 MAFAYA HOLDER-DASE					3 F 1 1 X K 0 1 X						

DIAGRAM WHAT HAPPENED BELOW

Reason For No Diagram _____

1 Officer not at scene

2 Vehicles moved

3 Other _____

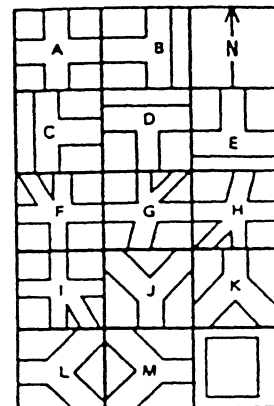
NUMBER 9639014

INDICATE DIRECTION
OF NORTH

VEHICLE NO 3 NO



ESTIMATED TRAVEL SPEED	00
ESTIMATED IMPACT SPEED	00
POSTED SPEED	40
ADVISORY SPEED	40



INDICATE INTERSECTION TYPE

SEE PAGE #1

DESCRIBE WHAT HAPPENED
(Refer to Vehicle by Number)

DAMAGE TO PROPERTY
OTHER THAN VEHICLES

Name object and state nature and amount of damage

ESTIMATE

Name and address of
owner of object struck

If Hazardous Materials were involved
list the placard number from off the
commercial vehicle:

WITNESSES

Name _____ Address _____ Phone _____
Name _____ Address _____ Phone _____

FIRST AID ADMINISTERED BY

EMS REPORT NO

INJURED TAKEN BY

- 1- Ambulance, Private
- 2- Ambulance, Fire
- 3- Paramedics
- 4- Private Vehicle
- 5- Helicopter
- 6- Other

TIME: Amb. Called: _____ Arrived: _____

INJURED TAKEN TO _____

POLICE ACTIVITY

Month _____ Day _____ Year _____ Date Notified of Accident

Time Notified of Accident

(USE
MILITARY
TIME)

Arrived at Scene

Investigation of accident
Completed at _____ of _____

Source of Information

Officer at scene _____
Driver No. _____ Contacted station _____
Other _____

PHOTO(S) TAKEN
YES ☐ NO ☐
VIDEO TAKEN
YES ☐ NO ☐
FIELD DIAGRAM
YES ☐ NO ☐

Name _____ Charge: _____
Name _____ Charge: _____

CVSA Inspection Yes _____ No _____ If Yes, Report Number _____

Other action taken _____

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RECORDED STATEMENT SUMMARY

CLAIM NUMBER 44 0983 420

CLAIM REP. Wally Azono

NAME 1445 W. Brookfield Ave STATUS IP

ADDRESS 528 84 PHONE WORK 265-0231
979-9040

CONTROL _____ DIRECTION OF TRAVEL/STREETS _____

ID TRAVEL SPEED _____ ID IMPACT SPEED _____ ID _____

CD TRAVEL SPEED _____ CD IMPACT SPEED _____ CD _____

SUMMARY OF FACTS:

DOL: 7/18/96 TIME: 8:30 Pm. LOCATION: 35000 rd.

POLICE DEPART: SWC PD. OFFICER: _____ TICKETS: _____

WITNESS: Lex Watson PHONE: _____ C/D: _____

VEHICLE: 1993 Ford REGISTERED OWNER: Wally Azono

FACTS: #1 ran red light & hit #2 #1
hit #3

PURPOSE OF TRAVEL: _____

PASSENGERS: _____ NAME: 2 kids. PHONE: _____

INJURIES CLAIMED: Not injured.
Wreck. hand left numb.

MEDICAL PROVIDERS THIS LOSS:

Cottonwood Hosp.

LOSS OF INCOME ALLEGED (SALARY, DAYS LOST, DOCTORS EXCUSE):

SERVICES: Y N

DESCRIPTION OF JOB DUTIES AND TITLE:

Warehouse - shipping-receiving

PREVIOUS OR SUBSEQUENT MVA, WC, OR OTHER INJURIES:

OMVA, OWC, & prior, & Misc

ALL MEDICAL PROVIDERS 10 YEARS PRIOR TO THIS LOSS:

Dr. Naylor, M.D.
all