1993

Harold Brittain v. State of Utah, by and through the Utah Department of Employment Security, and, the State of Utah, by and through Utah Division of Facilities Construction and Management : Brief of Appellee

Utah Court of Appeals

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930416 IN THE UTAH COURT OF APPEALS

HAROLD BRITTAIN,	:	
Plaintiff-Appellant,	:	
v.	:	
STATE OF UTAH, by and through the UTAH DEPARTMENT OF EMPLOYMENT SECURITY, and, THE STATE OF UTAH, by and through UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT,	:	Case No. 930416-CA
	:	Priority 15
Defendants-Appellees.	:	

BRIEF OF APPELLEES

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Appeal From a Judgment of Dismissal of the Fourth Judicial District Court, Utah County, the Honorable Lynn W. Davis, presiding

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter under Utah Code Ann. § 78-2a-3(2)(j) (1992), providing for jurisdiction in the Court of Appeals over cases transferred from the Supreme Court.

STATEMENT OF THE ISSUES PRESENTED AND STANDARDS OF REVIEW

1. In a lawsuit against the Utah Department of Employment Security and the Utah Division of Facilities Construction and Management, whether service of a notice of claim on the Division of Risk Management satisfies the statutory requirement that notice of a claim against the state be "filed with" the "agency concerned"?

Standard of Review: This is an issue of statutory construction, which is a question of law to be reviewed for

correctness, according no deference to the decision of the trial court. In re Estate of Anderson, 821 P.2d 1169, 1171 (Utah 1991); Jerz v. Salt Lake County, 822 P.2d 770, 771 (Utah 1991); Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1038 (Utah 1989).

2. Whether the State may be estopped from challenging the subject matter jurisdiction of the trial court?

Standard of Review: Whether subject matter jurisdiction exists is a question of law to be reviewed for correctness. State Dep't of Social Services v. Vijil, 784 P.2d 1130, 1132 (Utah 1989).

3. Whether the State's defense on the merits of plaintiff's claim should estop it from asserting plaintiff's failure to comply with the notice of claim requirement?

Standard of Review: Whether undisputed facts establish estoppel is also a question of law to be reviewed for correctness, without deference to the decision below. CECO Corp. v. Concrete Specialists, Inc., 772 P.2d 967, 969 (Utah 1989) (reviewing summary judgment).

DETERMINATIVE OR IMPORTANT PROVISIONS

The following provisions are set forth in full in Addendum B to this Brief:

1903 Utah Laws 19 § 1
1905 Utah Laws 5 § 1
1965 Utah Laws 139 § 12
Utah Code Ann. §§ 63-30-11 & -12 (1989)
Utah Code Ann. §§ 63A-4-101 to -103 (Supp. 1993)
Utah Code Ann. § 63A-4-201(1)(b) (Supp. 1993)
Utah Administrative Code R37-1-3 (1993)

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a judgment of the Fourth Judicial District Court, Utah County, the Honorable Lynn W. Davis presiding, dismissing plaintiff's personal injury claim against the State for failure to comply with the statutory notice of claim requirement.

Course of the Proceedings and Disposition Below

Plaintiff filed his complaint in September 1991. Defendants answered in November 1991, denying all allegations material to this appeal and asserting as an affirmative defense that the Utah Governmental Immunity Act barred plaintiff's claims. In June 1992, defendants moved to dismiss the complaint on the ground that plaintiff had failed to file a notice of claim with the "agency concerned" as required by the Utah Governmental Immunity Act. The trial court entered an order granting the motion on February 1, 1993. Plaintiff filed a notice of appeal on March 3, 1993.

Statement of the Facts

According to the allegations of the complaint, plaintiff was injured on February 4, 1991 when he slipped on some ice on the front steps of the Department of Employment Security (Job Service) building in Provo, Utah. Plaintiff alleged that snow had melted off the roof of the building and formed ice on the steps, that the Division of Facilities Construction and Management (DFCM) was negligent in approving the design and

construction of the building and roof, and that both DFCM and Job Service were negligent in maintaining the building and steps. R. 1-4.

The complaint contained no allegation that notice of plaintiff's claim was filed in accordance with the Utah Governmental Immunity Act. In June 1992, the State moved to dismiss the complaint on the ground that plaintiff had failed to file notice of his claim with either Job Service or DFCM. R. 117-34.

In response to the State's motion, plaintiff submitted a copy of a notice of claim directed to the Attorney General and served upon both the Attorney General and the Division of Risk Management (Risk Management) on March 11, 1991. R. 167-72. Plaintiff also submitted an affidavit of his attorney, Brent D. Young, describing various correspondence and other contacts Mr. Young had before filing the complaint with an adjuster retained by Risk Management to investigate the claim, in which Mr. Young claimed that the adjuster identified himself as the "agent" of Risk Management and Job Service. R. 139-50.

The trial court granted the State's motion on February 1, 1993.

SUMMARY OF ARGUMENT

The term "agency concerned" in the notice of claim provision must be construed in light of the language of the entire provision and its statutory purpose. Construed in this light, the obvious and natural meaning of the term is the state

agency allegedly at fault for the claimant's injuries. To construe the term to refer to Risk Management or any other agent of the agency at fault is unreasonable. Brittain failed to file his notice of claim with either of the defendant state agencies and therefore his claim is barred.

Brittain's contention that the State should be estopped from asserting his defective notice of claim is unsound for numerous reasons. First, failure to file a proper notice of claim deprives the trial court of subject matter jurisdiction of the claim and subject matter jurisdiction may not be established by estoppel. Second, Brittain's allegations do not establish any of the three elements of equitable estoppel: the State did not act or fail to act in any way inconsistent with its assertion of the defective notice of claim; any reliance on the State's conduct in defending itself on the merits was unreasonable; and, Brittain did not change his position in reliance on the State's conduct.

For these reasons, the entire judgment below dismissing Brittain's complaint should be affirmed.

ARGUMENT

POINT I

BRITTAIN'S CLAIM IS BARRED BECAUSE HE FAILED TO FILE NOTICE OF HIS CLAIM WITH THE STATE AGENCIES HE ALLEGED WERE RESPONSIBLE FOR HIS INJURIES

Brittain failed to file notice of his claim with the state agencies he alleged were responsible for his injuries and

therefore his claim is barred. Section 12 of the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-1 to -38 (1989), provides:

> A claim against the state . . . is barred unless notice of claim is filed with the attorney general and the agency concerned within one year after the claim arises. . . .

Utah Code Ann. § 63-30-12 (1989) (emphasis added.) Read in its full context and in light of the purpose of the statute, the term "agency concerned" unambiguously refers to the state agency allegedly at fault for the claimant's injuries. Brittain filed his complaint against Job Service and DFCM, alleging that their acts and omissions caused his injuries. Each of these agencies was therefore an "agency concerned" for purposes of Brittain's claim against the state and section 63-30-12 mandated that notice be filed with them.

A. The "Agency Concerned" Is The State Agency Allegedly At Fault

To interpret a statute, a court first examines its plain language. The court will resort to other methods of statutory interpretation only if the language is ambiguous. State v. Vigil, 842 P.2d 843, 845 (Utah 1992). "A statute is ambiguous if it can be understood by reasonably well-informed persons to have different meanings." Tanner v. Phoenix Ins. Co., 799 P.2d 231, 233 (Utah. App. 1990). A statute is not ambiguous, however, simply because the parties urge differing interpretations. In re Estate of Ressenger, 161 S.E. 2d 257, 260 (W. Va. 1968). Cf. Alf v. State Farm Fire & Cas. Co., 850 P.2d 1272, 1274-75 (Utah 1993) (construing insurance policy); Buehner

Block Co. v. UWC Assocs., 752 P.2d 892, 895 (Utah 1988) (construing contract).

As used in section 63-30-12, the term "agency concerned" cannot reasonably be understood by a well-informed person to refer to Risk Management. In determining whether a statute is ambiguous, its language is viewed in the context of the entire statute and according to the purpose of the legislation. Salt Lake City v. Salt Lake County, 568 P.2d 738, 741 (Utah 1977) (construing statute according to its "natural and reasonable meaning . . . , consistent with its purpose"). In this context, the obvious and natural meaning of the term "agency concerned" is the agency allegedly at fault for the claimant's injuries. On the other hand, Brittain's interpretation of the term to mean Risk Management is forced and strained. See Mace v. Webb, 614 P.2d 647, 649 (Utah 1980) (construing statute according to its "obvious and natural meaning."). Cf. Buehner Block Co., 752 P.2d at 896 (applying same standard in construing contract).

An examination of the language of section 63-30-12 as a whole reveals that in addition to filing with the agency concerned, the section explicitly requires that notice be filed with the Attorney General. As recently noted by the local federal district court, this dual notice requirement may at first blush appear redundant. See Kabwasa v. University of Utah, 785 F. Supp. 1445, 1447 (D. Utah 1990) (dismissing pendant state claim for failure to file notice upon the University of Utah in addition to notice upon the Attorney General) (cited with

approval in Lamarr v. Utah Dep't of Transp., 828 P.2d 535, 541 n. 6 (Utah App. 1992)).

The reason for this apparent redundancy is, however, easily discerned: each of the required filings serves a distinct purpose. The Attorney General has the duty to "defend all causes to which the state . . . is a party." Utah Code Ann. § 67-5-1 (1986). Thus, notice to the Attorney General is obviously intended to ensure that the state's legal needs are met.

On the other hand, as the Supreme Court recognized in Sears v. Southworth, 563 P.2d 192 (Utah 1977), the notice of claim requirement also "provides the governmental unit with an opportunity to promptly investigate and to remedy any defect immediately, before additional injury is caused . . . ." Id. at 193. Neither the Attorney General nor Risk Management has the primary responsibility or authority to accomplish this loss control and prevention function. That responsibility and authority lies with the state agency allegedly responsible for the claimant's injuries, whose acts or omissions allegedly caused the injuries and against which the claim is asserted. Thus, a key purpose of the notice of claim requirement is fulfilled only by notice to the agency allegedly at fault.

Brittain correctly notes that Risk Management has the authority to adjust, settle and pay claims within the coverage of the Risk Management Fund and thus serves some of the purposes of the notice of claim provision. Risk Management also assists state agencies in their loss control efforts by making

"recommendations about risk management and risk reduction strategies." Utah Code Ann. § 63A-4-102(1)(g) (Supp. 1993). Nevertheless, to interpret section 63-30-12 to require notice upon Risk Management is unreasonable.

First, as Brittain notes, R37-1-3 (formerly R26-1-3) of the Utah Administrative Code provides that upon receiving a notice of claim the "covered entity" shall forward a copy to Risk Management. While ensuring that Risk Management will ultimately also receive notice of the claim, this provision clearly contemplates that the agency allegedly at fault will receive notice first, directly from the claimant. Moreover, no corollary provision exists for Risk Management to send copies of notices it receives to the covered entity. Thus, under Brittain's interpretation of section 63-30-12, there would be a substantial risk that notice to Risk Management would completely by-pass the agency, which may therefore never be alerted to a potentially critical need for remedial measures to avoid future injuries and losses.

Second, section 63-30-12 has required notice to the Attorney General and the "agency concerned" since its enactment in 1965. 1965 Utah Laws 139 § 12. Not until 1981, in response to the decreasing availability and increasing cost of private insurance for governmental entities, was Risk Management created. Nor did any single state agency perform a comparable function before Risk Management was created. Thus, the requirement of filing notice with the "agency concerned" pre-dates the existence

of Risk Management and was clearly not intended to refer to that agency.

Third, if the legislature had intended, as Brittain asserts, that notices of claim be filed with Risk Management, it could have so provided simply by specifically naming that agency. The use of the generic term "agency concerned" rather than the particular agency name indicates that all state agencies are potential recipients of notices of claim, depending upon the particular claim being asserted.

Brittain incorrectly asserts that "no other state agency is authorized to handle claims against state agencies," Brief of Appellant at 20. To the contrary, many claims that are subject to the notice requirement fall outside the coverage of the Risk Management Fund and thus remain the responsibility of the agency allegedly at fault. The Fund covers only those "risks as determined by the risk manager in consultation with the executive director." Utah Code Ann. § 63A-4-201(1)(b) (Supp. 1993) (formerly codified at Utah Code Ann. § 63-1-47 (Supp. 1992)). Thus, some claims against agencies otherwise covered by the Fund are not covered. (Claims for back wages in wrongful termination of employment cases, for example, are generally not covered.)

In addition, the Risk Manager has the specific statutory authority to require or permit any state agency to self-insure or obtain separate private insurance coverage. Utah Code Ann. § 63A-4-103(1)(a) & (2)(a) (Supp. 1993) (formerly

codified at Utah Code Ann. § 63-1-46.1 (Supp. 1992)). Thus, some agencies (for example, the University of Utah Hospital and College of Medicine) are covered by a separate self-insurance fund not administered by Risk Management.

Under this flexible statutory scheme, the scope of coverage provided by the Risk Management Fund to state agencies historically has varied considerably. Thus, while perhaps the large majority of damages claims against state agencies are covered by the Fund, the overall state risk management scheme delegates to many different state agencies the authority to handle claims against the state.

For claims that fall outside the coverage of the Risk Management Fund, it is imperative that the agency allegedly at fault receive the statutory notice. Notice of such a claim to Risk Management would not serve any of the purposes of section 63-30-12.

Moreover, an injured party unfamiliar with the continually changing state risk management scheme may have considerable difficulty determining the agency responsible for settlement and payment of the claim. However, such a party will virtually always know or be able easily to determine which agency was responsible for the conduct that allegedly caused the injury. Thus, the only reasonable interpretation of the term "agency concerned" is the state agency allegedly at fault.

This conclusion is further reinforced by a reading of the relevant case law. While Brittain is correct that the

precise issue presented here is one of first impression, the meaning of "agency concerned" is nevertheless clearly divulged by the cases decided under section 63-30-12.

In Lamarr v. Utah Dep't of Transp., 828 P.2d 535, 541 (Utah App. 1992), for example, this Court held that the plaintiff's claim against the state was barred because the plaintiff filed notice only with the Attorney General and not with the Utah Department of Transportation, the state defendant. In so holding, Court repeatedly stated that "[t]he plain language of section 60-30-12 requires notice both to the attorney general and UDOT . . . ." Id. (emphasis added). In addition, the Court quoted approvingly from Kabwasa v. University of Utah, 785 F. Supp. 1445, 1446-47 (D. Utah 1990) in which the federal district court held the plaintiff's claims against the state barred because, again, the plaintiff there filed notice only with the Attorney General and not with the state agency named as a defendant.

In Kabwasa, the court stated, "the plain meaning of section 63-30-12 requires that two notices of claim should have been filed by plaintiff: one to the Attorney General and one to the University of Utah." Id. (emphasis added). See also Johnson v. Utah State Retirement Office, 621 P.2d 1234, 1236 (Utah 1980) (holding notice of claim filed with the Attorney General and the defendant state agency within one year of the date the claim arose satisfied section 63-30-12 and was not nullified by filing of complaint on same day); Forsman v. Forsman, 779 P.2d 218, 220-

21 (Utah 1989) (J. Howe concurring and dissenting) (stating "Utah Code Ann. § 63-30-12 (1986, Supp. 1988) requires that as a prerequisite to suing a state employee for an act or omission occurring within the scope of his employment, the plaintiff must within one year after the claim arises, file a notice of claim with the attorney general and with the agency employing the employee." (emphasis added)).

Research discloses only a single case involving a notice of claim filed with Risk Management: in that case, however, Risk Management itself was the defendant under a direct action statute for personal injury protection benefits. See Utah Code Ann. § 31A-22-309(5); Neel v. State, 213 Utah Adv. Rep. 43, 44 (Utah App. May 21, 1993).

These cases demonstrate that the natural and obvious meaning of the term "agency concerned" is the agency allegedly at fault. While not directly addressing the meaning of the term in any of these cases, the respective courts showed no hesitation in applying the term according to its common sense meaning. Moreover, all of the above cases except Lamarr and Neel were decided before Brittain's accident in February 1991 and thus were available to anyone attempting to construe section 63-30-12 at the time Brittain filed his notice of claim.

B. Notice Served Upon An Agent Of The "Agency Concerned" Is Invalid

Thus, Brittain's theory that Risk Management itself is the "agency concerned" does not withstand analysis. For the reasons discussed below, his alternative contention -- that

notice served upon Risk Management satisfies the filing requirement of section 63-30-12 because Risk Management is an agent of Job Service and DFCM -- is also unpersuasive.

1. Strict Compliance With The Notice Of Claim Provision Is Required

First, this latter contention amounts to an argument that substantial compliance satisfies the notice requirement. That argument has been rejected numerous times by the Supreme Court, which has consistently strictly construed the requirements of section 63-30-12.

In Scarborough v. Granite Sch. Dist., 531 P.2d 480, 482 (Utah 1975), for example, the Court held that the plaintiff's oral statements to the school principal who provided a written report to the school district did not satisfy Utah Code Ann. § 63-30-13 (1989), the parallel provision to section 63-30-12 for notices of claim against political subdivisions.[1]

Rejecting the plaintiff's argument that such actual notice sufficed, the Court stated, "We have consistently held that where a cause of action is based upon a statute, full compliance with its requirements is a condition precedent to the right to maintain a suit." Id. (citations omitted). See also Sears v. Southworth, 563 P.2d 192, 194 (Utah 1977) (actual knowledge as evidenced by law enforcement officers' investigation of accident insufficient to satisfy notice requirement); Varoz v.

[1]Section 63-30-13 states: "A claim against a political subdivision . . . is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the claim arises . . . ."

Sevey, 29 Utah 2d 158, 506 P.2d 435, 436 (1973) (same). Compare Stahl v. Utah Transit Auth., 618 P.2d 480, 483 (Utah 1980) (holding notice to insurance agent sufficient under former notice requirement of Utah Public Transit Act, distinguishing the above cases on ground that sections 63-30-12 & 13 contain "words of absolute prohibition as a consequence of noncompliance, thus suggesting a stricter standard of adherence."). Under these cases, Brittain's failure to file written notice with the appropriate state agencies is fatal to his claim.

Brittain misconstrues several older Utah Supreme Court cases involving obsolete notice provisions as supporting a substantial compliance rule. Sweet v. Salt Lake City, 43 Utah 306, 134 P. 1167 (Utah 1913) (affirming dismissal of complaint for failure to file timely notice); Hurley v. Bingham, 63 Utah 589, 228 P. 213 (Utah 1924) (same); Spencer v. Salt Lake City, 17 Utah 2d 362, 412 P.2d 449 (Utah 1966) (reversing dismissal of complaint where notice "gave the time, place and stated generally the nature of the alleged defect and the injury" but did not specify the amount of damages).

At most, however, these cases support the proposition that some leeway is accorded for the content of notices of claim. Recent cases decided under sections 63-30-12 and -13 also grant a limited degree of latitude for the content of a notice of claim. See Behrens v. Raleigh Hills Hosp., Inc., 675 P.2d 1179, 1183 (Utah 1983) (reversing denial of motion to amend complaint to add punitive damages prayer where notice of claim included specific

allegations of misconduct); but see Yearsley v. Jensen, 798 P.2d 1127, 1129 (Utah 1990) (affirming denial of motion to amend complaint to add malicious prosecution and false arrest claims where notice described only assault and battery).

Brittain's reliance on such cases is misplaced. Unlike the plaintiffs in Spencer and Behrens, Brittain did not timely file notice on the appropriate parties in accordance with the statute. This case is more analogous to Sweet, Hurley, and, more recently, Lamarr v. Utah Dep't of Transp., 828 P.2d 535 (Utah App. 1992) and Kabwasa v. University of Utah, 785 F. Supp. 1445 (D. Utah 1990), all of which dismissed of the plaintiffs' claims where no timely notice was filed on the proper parties. Brittain's attempt to distinguish Lamarr on the ground that in that case only one notice was filed is unpersuasive. Just as no notice was filed on the "agency concerned" in Lamarr, no such notice was filed here. The failure to file notice directly with the "agency concerned" is fatal to a claim against the State, regardless of how many other notices are filed.

Again, this result is mandated by the language of section 63-30-12 itself. As noted by the federal district court in Kabwasa, 785 F. Supp. at 1447 (D. Utah 1990), "the Utah Attorney General is the agent and legal counsel for all state agencies . . . ." The requirement of filing with the agency allegedly at fault in addition to filing with its agent, implies that filing with an agent alone is insufficient and that the requirement of filing with the agency allegedly at fault has

particular importance. In other words, if filing with an agent alone were sufficient, the statute would require only a single filing with the Attorney General.

2. Risk Management Had No Actual Or Apparent Authority To Accept Brittain's Notice Of Claim

Brittain's agency theory also fails under principles of agency law. Therefore, even the notice of claim requirement could be satisfied by service of notice upon an agent of the agency concerned, Brittain's notice was insufficient.

Assuming Risk Management is the agent of other state agencies, it nevertheless has no authority, either actual or apparent, to accept notices of claim on behalf of any such agency. Actual authority may be either express or implied:

> Express authority exists whenever the principal directly states that its agent has the authority to perform a particular act on the principal's behalf. Implied authority, on the other hand, embraces authority to do those acts which are incidental to, or are necessary, usual and proper to accomplish or perform, the main authority expressly delegated to the agent. Implied authority is actual authority based upon the premise that whenever the performance of certain business is confided to an agent, such authority carries with it by implication authority to do collateral acts which are the natural and ordinary incidents of the main act or business authorized. This authority may be implied from [sic] the words and conduct of the parties and the facts and circumstances attending the transaction in question.

Zions First Nat'l Bank v. Clark Clinic Corp., 762 P.2d 1090, 1094-95 (Utah 1988) (footnotes omitted).

Brittain has identified no express statement of the

authority of Risk Management by either Job Service or DFCM. The duties and powers of the Risk Manager, however, are defined in Utah Code Ann. §§ 63A-4-101 and -102 (Supp. 1993). See Addendum B. Neither of those provisions contain any express statement that the Risk Manager has authority to receive notices of claim for other state agencies. See Addendum B.

Nor is such authority implied by those provisions. As discussed in Point I.A. above, the Risk Management Fund provides only limited coverage for state agencies and the notice of claim serves an important function performed primarily by the agency allegedly at fault. As also discussed in Point I.A. above, the administrative rules promulgated by the Risk Manager provide that the covered entity shall receive notices of claim and forward copies to Risk Management while no corresponding provision exists for Risk Management to send copies to the covered entity. Utah Administrative Code R37-1-3 (1993). Thus, the facts and circumstances here undermine, rather than support the notion that Risk Management has actual authority to receive notices of claim for other state agencies.

In contrast to actual authority, apparent authority "is premised upon the [principal's] knowledge of and acquiescence in the conduct of its agent which has led third parties to rely upon the agent's actions." Risk Management had no apparent authority to accept notices of claim on behalf of either Job Service or DFCM.

"An agent's apparent or ostensible authority flows only

from the acts and conduct of the principal." Zions First Nat'l Bank v. Clark Clinic Corp., 762 P.2d at 1095.

> Nor is the authority of the agent "apparent" merely because it looks so to the person with whom he deals. It is the principal who must cause third parties to believe that the agent is clothed with apparent authority . . . . It follows that one who deals exclusively with an agent has the responsibility to ascertain that agent's authority despite the agent's representations.

City Electric v. Dean Evans Chrysler-Plymouth, 672 P.2d 89, 90 (Utah 1983) (citations omitted).

Here, for his claim that Risk Management was acting as agent for the defendant state agencies in accepting his notice of claim, Brittain offered the affidavit of Mr. Young concerning a series of letters and other contacts between Mr. Young and either Risk Management or a private insurance adjuster. R. 139-50 (attached as Addendum C). None of these letters or contacts, however, evidence any representations made directly by either Job Service or DFCM. (In fact, DFCM was not even mentioned in any of the correspondence. In addition, most of the contacts occurred after Brittain had served his notice upon Risk Management on March 11, 1991, and therefore Brittain cannot claim to have relied upon them in deciding to send his notice to Risk Management.)

The only representation made or action taken directly by either Job Service or DFCM at any time within the year after the accident, was when Job Service "reported the claim to State Risk Management." R. 150 (Affidavit of Brent D. Young, ¶ 3).

While this may have been sufficient to clothe Risk Management with apparent authority to act as Job Service's agent, that authority was not unlimited. In reporting the claim to Risk Management, Job Service did not contradict the plain mandate of section 63-30-12 that a notice of claim be filed with the agency concerned, i.e. the agency allegedly at fault. Thus, Risk Management did not have apparent authority to accept a notice of claim on behalf of either Job Service or DFCM.

The Utah Supreme Court addressed an analogous situation in Forsyth v. Pendleton, 617 P.2d 358 (Utah 1980). In Forsyth, some buyers under a real estate purchase contract sent the seller a letter dated September 28 requesting a deferral of payments until the spring. They were then contacted by the seller's attorney, who granted the buyers a grace period. While upholding the trial court's finding that the attorney had apparent authority to act as the seller's agent, the Court continued:

> [W]e are compelled to note that the agency was not unlimited, that is, Mr. Skeen was acting as agent for Mrs. Pendleton to respond to plaintiff's letter and only within the scope of that letter. Accordingly, we believe that any grace granted by him could not be greater than that actually bestowed upon him by Mrs. Pendleton, of which there is no evidence, nor any greater than that which he apparently had. In light of the contents of the September 28 letter and its repeated and specific reference to renewing the payment schedule when spring came, this Court is unable to agree with plaintiff that Mr. Skeen had unlimited authority to waive payments indefinitely.

Id. at 361.

Just as the buyers' letter to the seller in Forsyth

defined and limited the apparent authority of the attorney to respond for the seller, the relevant statutes here define and limit the apparent authority of Risk Management to receive a notice of claim. As discussed in Point I.A. above, section 63-30-12 requires that notices of claim be filed with the agency allegedly at fault. Absent any specific evidence that Risk Management was granted authority to receive the notice of claim in this case, Risk Management's apparent authority cannot extend beyond that granted under section 63-30-12. In reporting Brittain's informal claim to Risk Management, Job Service did nothing inconsistent with statutory scheme that contemplated filing of formal notice of the claim with Job Service and DFCM.

Thus, neither defendant state agency engaged in any act or conduct suggesting that Risk Management had authority to accept a notice of claim. Brittain does not claim that either Job Service of DFCM had knowledge of and acquiesced in the service of his notice of claim upon Risk Management. Therefore, Risk Management had no authority, either actual or apparent, to accept Brittain's notice of claim. Brittain's claim is therefore barred by section 63-30-12.

POINT II

SUBJECT MATTER JURISDICTION MAY NOT BE CONFERRED BY ESTOPPEL

Brittain's contention that the State should be estopped from asserting his defective notice of claim is unsound as a matter of law. Both this Court and the Utah Supreme Court have unequivocally held that compliance with the notice of claim

requirement is jurisdictional and that failure to comply deprives the trial court of subject matter jurisdiction over the plaintiff's claims.

In Lamarr v. Utah Dep't of Transp., 828 P.2d 535 (Utah App. 1992), this Court addressed the issue, raised by UDOT for the first time on appeal, of whether the plaintiff's notice of claim was defective because it was filed only with the Attorney General and not with UDOT. The plaintiff contended that UDOT had waived any defect in the notice by failing to raise the issue in its answer or in its successful summary judgment motion. This Court rejected that contention:

> Lamarr's argument, however, misconstrues the nature of the statutory notice of claim requirement. Lamarr erroneously asserts the notice of claim provision is a statute of limitation. Rather, the supreme court has held the statutory notice requirement is a jurisdictional requirement and a precondition to suit. See Madsen v. Borthick, 769 P.2d 245, 250 (Utah 1988).
>
> Lack of jurisdiction can be raised at any time by any party or the court. Therefore, Lamarr's contention that the notice issue is not properly before this court fails. In fact, Rule 12(h)(2) of the Utah Rules of Civil Procedure requires this court to dismiss the claim against UDOT if the trial court lacked jurisdiction.

Id. at 540 (emphasis in original) (citations omitted). The court went on to affirm the trial court's dismissal of Lamarr's complaint on the ground that the notice of claim was defective. Id. at 541-42.

As this Court has noted, to hold that a party may be estopped from asserting lack of subject matter jurisdiction,

"seems inconsistent with the generally announced and fundamental legal proposition that '[s]ubject matter jurisdiction is the authority and competency of the court to decide the case,' without which, the court may not validly act." Van der Stappen v. Van der Stappen, 815 P.2d 1335, 1339 n. 5 (Utah App. 1991) (quoting State v. Vijil, 784 P.2d 1130, 1132 (Utah 1989)).

Based on that inconsistency, this Court questioned the apparent holding of Caffal v. Caffal, 5 Utah 2d 407, 303 P.2d 286, 288 (1956), that a husband was estopped from attacking the validity of a divorce decree on the ground that the marriage was void and therefore the trial court lacked subject matter jurisdiction. Van der Stappen, 815 P.2d at 1339-40 nn.5 & 8. See also Nelson v. Iowa-Illinois Gas & Electric Co., 143 N.W.2d 289, 296 (Iowa 1966) ("Jurisdiction of a court over the subject matter is conferred by law and cannot be based on the estoppel of a party to deny its existence."); In Re Estate of Edinger, 136 N.W.2d 114, 120 (N.D. 1965) ("'Jurisdiction of the subject matter is derived solely from law and can, in no event, be conferred by the consent of the parties,' waiver or estoppel." (citations omitted)); 20 Am. Jur. 2d Courts § 95 at 455 (1965 & Supp. 1992) ("It is generally settled that there can be no valid waiver of an objection that a court lacks jurisdiction over the subject matter, and that there can be no estoppel to object on this ground.").

The court in Van der Stappen went on to suggest that the Utah Supreme Court's statement in Caffal that the trial court

lacked subject matter jurisdiction over a marriage where the marriage was void was erroneous because the court could have entered a decree of annulment. Van der Stappen, 815 P.2d at 1339-40 n.8. Nevertheless, because the parties had "based their arguments upon the premise that Caffal's statement regarding subject matter jurisdiction is controlling," and because "we do not have the power to overrule a decision of the supreme court," the Court in Van der Stappen applied Caffal. "[I]t appears that at this time we can do no more than question Caffall. The problems we see with Caffall will remain unresolved until dealt with by the supreme court." Van der Stappen, 815 P.2d at 1339-40 n.8.

More troublesome here is the Utah Supreme Court's decision in Forsman v. Forsman, 779 P.2d 218 (Utah 1989). In Forsman, the Court reversed the dismissal of the plaintiff's claim against the State and remanded the case to the trial court for determination of an issue of fact as to whether the State should be estopped from asserting the plaintiff's defective notice of claim as a defense. Id. at 220.

The Court's decision in Forsman hinged upon Rice v. Granite Sch. Dist., 23 Utah 2d 22, 456 P.2d 159 (1969), in which the Court had held a school district was estopped from asserting the plaintiff's failure to meet the applicable statute of limitations. In relying on Rice, however, the Forsman court failed to consider the critical distinction between the notice of claim requirement, which is jurisdictional, and a statute of

limitations, which may be waived. Thus, the Court erred.

To follow Forsman here would not only perpetuate that error and further confuse the law on this issue, but would be inconsistent with Madsen v. Borthick, 769 P.2d 245, 247-50 (Utah 1988) followed in Lamarr, 828 P.2d at 541, in which the Utah Supreme Court held that the failure to file notice of a claim is jurisdictional. It would also be inconsistent with the numerous Utah Supreme Court cases which hold that parties may not waive, consent to, or acquiesce in the improper exercise of subject matter jurisdiction. See, e.g., A.J. Mackay Co. v. Okland Constr. Co., 817 P.2d 323, 325 (Utah 1991); Olson v. Salt Lake City Sch. Dist., 724 P.2d 960, 964 (Utah 1986).

While this Court may be powerless to overrule a decision of the Utah Supreme Court, when faced with conflicting lines of cases, neither of which even mentions the other, this Court must choose between them. Consistent with the general rule that subject matter jurisdiction may not be conferred by estoppel, this Court should reject Brittain's contention that the State is estopped from asserting his defective notice of claim.

POINT III

THE STATE'S DEFENSE AGAINST BRITTAIN'S CLAIM ON THE MERITS DOES NOT ESTOP IT FROM RAISING THE DEFECTIVE NOTICE OF CLAIM

The State's investigation of and defense against Brittain's claim on the merits do not estop it from raising the defective notice of claim. "Estoppel is '"conduct by one party which leads another party, in reliance thereon, to adopt a course

of action resulting in detriment or damages if the first party is permitted to repudiate his conduct."'" Mont Trucking, Inc. v. Entrada Indus., Inc., 802 P.2d 779, 782 (Utah App. 1990) (citation omitted). "'To find estoppel, three elements must be present: (1) a representation, act, or omission, (2) justifiable reliance, and (3) a change of position to one's detriment based on that reliance.'" Id. (citation omitted). Brittain has shown none of these three elements.

First, the State has made no representations and committed no acts or omissions inconsistent with its assertion of the defective notice of claim. The State's investigation of and defense against Brittain's claim on the merits were not inconsistent with its assertion of the defective notice of claim.

The State has no duty to inform claimants of defects in their notices of claim. As Brittain points out in his brief, around the turn of this century, the statutory notice requirement for claims against municipalities expressly required municipalities to give claimants notice of any defects in their notices and allow sufficient time to cure the defect. 1903 Utah Laws 19 § 1; Bowman v. Ogden City, 33 Utah 196, 93 P. 561, 564 (1908). This provision was later amended to delete the language requiring that municipalities give claimants' notice of such defects. 1905 Utah Laws 5 § 1. As recognized by the Utah Supreme Court, that amendment was "no doubt intended" to eliminate the opportunity to cure defective notices. Sweet v. Salt Lake City, 43 Utah 306, 134 P. 1167, 1171 (1913).

The legislative choice not to impose upon governmental entities the duty to give claimants' notice of defects in their notices of claim was repeated in the enactment of section 63-30-12. It was Brittain's obligation to strictly comply with the plain requirements of section 63-30-12 and the State had no duty whatsoever to alert Brittain to any and all possible defects in his notice of claim.

Moreover, at least two and one-half months before the one year period ran for filing notice of Brittain's claim, the State filed an answer raising the Utah Governmental Immunity Act as a defense. The State's tenth affirmative defense stated:

> Defendants are immune or this action is barred by virtue of the Utah Governmental Immunity Act, Utah Code Ann. § [sic] 63-30-1, et seq., including without limitation, § [sic] 63-30-3, -4, and -10.

R. 19 (emphasis added). While not specifically identifying the notice of claim provision, this defense put Brittain on notice of a potential bar to his claim. Had he been interested in this defense to his claim, Brittain could have conducted discovery to determine its factual basis. The State would then have been forced to disclose the defect in Brittain's notice. Only eleven days after the State's answer was filed, however, instead of conducting such discovery, Brittain filed a Certificate of Readiness for Trial. R. 23.

Second, even if the State's investigation of and defense against Brittain's claim on the merits could be viewed as inconsistent with its later express assertion that Brittain had

failed to file proper notice of him claim, Brittain did not justifiably rely on the State's conduct. Brittain has vigorously advocated the validity of his notice of claim in response to the State's motion to dismiss and on this appeal. That advocacy itself shows that in investigating and defending against Brittain's claim on the merits, the State merely took legitimate and necessary steps to protect its own interests. As Brittain points out, this case presents an issue of first impression of the interpretation of section 63-30-12. While the State strongly disagrees with Brittain's interpretation of that provision, certainly neither Risk Management nor the Attorney General's office could properly fulfill their duties by assuming that the notice of claim would ultimately be found invalid.

That Risk Management and the Attorney General's Office had a duty to defend the defendant state agencies against Brittain's claim on the merits was presumably understood by Brittain's counsel. The Utah Supreme Court resoundingly rejected a similar estoppel argument where the plaintiffs were represented by counsel when the acts on which they allegedly relied occurred. Cornwall v. Larsen, 571 P.2d 925 (Utah 1977).

In Cornwall, the plaintiffs had timely filed a proper notice of claim, but failed to file their complaint within one year after the claim was deemed denied as required by Utah Code Ann. § 63-30-15. They contended that the defendant county should be estopped from asserting the statute of limitations defense because "an insurance adjuster for the county lulled them into a

false sense of security by requesting medical information regarding the physical condition of the minor appellant." Cornwall, 571 P.2d at 926. In so contending, the plaintiffs relied upon Rice, 23 Utah 2d 22, 456 P.2d 159 (1969), which "held that a lay person might be so deceived by the conduct of an insurance adjuster as to create an estoppel on the part of the school district from raising the matter of late filing of the complaint." 571 P.2d at 927.

Addressing this argument, the Court stated:

> The instant matter differs from the Rice case. There the plaintiff was not represented by counsel and late filing was alleged to be excusable by the actions and conduct of the adjuster which gave rise to a genuine issue of material fact to be determined by the trial court. In the present case, the plaintiff had counsel who had timely filed the claim and who was well acquainted with the statute which provided that a complaint must be filed within one year after a claim is denied. The actions of the adjuster under those circumstances were not such as would warrant a conclusion that the clear mandate of the statute need not be followed.

571 P.2d at 927. This holding silently adopted the reasoning of the dissent in Whitaker v. Salt Lake City Corp., 522 P.2d 1252, 1254 (Utah 1974), impliedly overruling that decision.

Like the plaintiff in Cornwall, Brittain was represented by counsel who could not reasonably have misinterpreted the State's conduct. Thus, Brittain did not justifiably rely upon the State's conduct in investigating and defending against Brittain's claims.

Third, Brittain did not change his position in reliance

on the State's conduct. Brittain filed his notice of claim on March 11, 1991. According to his own allegations, Brittain then had only one preliminary contact with Risk Management which occurred on February 27, 1991. R. 149-50 (Affidavit of Brent D. Young, ¶ 4). Thus, Brittain did not change his position in reliance upon the subsequent investigation of his claim by Risk Management or upon the defense against his claim by the Attorney General's Office.

In sum, none of the three elements of equitable estoppel are present here. The State made no representation to Brittain that his notice of claim was valid. Brittain did not justifiably rely upon the State's conduct in investigating or defending against his claim on the merits. Nor did Brittain file his notice with the incorrect agency in reliance on that conduct. Thus, the State was not estopped from moving to dismiss Brittain's complaint based upon his defective notice of claim.

CONCLUSION

The common sense meaning of the term "agency concerned" as used in the notice of claim provision is the state agency allegedly at fault. Brittain's construction of the term to refer to Risk Management is unreasonable. Brittain failed to file his notice of claim with either of the agencies he alleges are responsible for his injuries and therefore his claim is barred.

The State may not be estopped from asserting the defective notice of claim because failure to file a proper notice of claim deprives the trial court of subject matter jurisdiction.

Subject matter jurisdiction may not be conferred by estoppel. Moreover, this case does not present any of the three elements of an equitable estoppel claim.

This Court should therefore affirm the entire judgment of dismissal below.

RESPECTFULLY SUBMITTED this 20th day of August, 1993.

JAN GRAHAM
Attorney General

Debra J. Moore

DEBRA J. MOORE
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that two true and accurate copies of the foregoing **BRIEF OF APPELLEES** were mailed, postage prepaid, this 20th day of August, 1993, to:

Brent D. Young
Ivie & Young
48 No. University Avenue
P.O. Box 672
Provo, UT 84603

Debra J. Moore

ADDENDA

ADDENDUM A

JAN GRAHAM - (1231)
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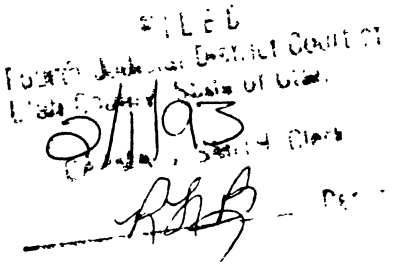

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY

STATE OF UTAH

HAROLD BRITTAIN, Plaintiff, v. UTAH DEPARTMENT OF EMPLOYMENT SECURITY, AKA JOB SERVICE, AND UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, Defendants.	**ORDER OF DISMISSAL WITH PREJUDICE** Civil No. 910400628PI Judge Lynn W. Davis

Defendants' Motion to Dismiss came up for hearing on December 23, 1992, Edward O. Ogilvie, appearing for defendants and Brent D. Young, appearing for plaintiff. Based on the accompanying memorandums in support of Defendants' Motion, and for good cause appearing, the Court finds that plaintiff failed to comply with the statutory Notice of Claim requirements found within Utah Code Ann. § 63-30-11 (1953), requiring that notices of claim be filed with, the Utah Department of Employment Security and the Utah Division of Facilities and Construction

Management, the defendant state agencies.

WHEREFORE, IT IS ORDERED that plaintiffs' cause of action against defendants is hereby dismissed with prejudice.

DATED this 1 day of Feb, 1993.

BY THE COURT:

Lynn W. Davis
Fourth District Court Judge

Approved As To Form:

Brent D. Young

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true and correct copy of the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** to the following this 30th day of January, 1993.

Brent D. Young
IVIE & YOUNG
48 North University Avenue
P.O. Box 672
Provo, Utah 84603

Debbie Briggs

ORIGINAL

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH

HAROLD BRITTAIN, Plaintiff, -v- UTAH DEPARTMENT OF EMPLOYMENT SECURITY, et al, Defendant.	Case No. 910400628 Partial Transcript

December 23, 1992

UTAH COUNTY JUDICIAL CENTER

PROVO, UTAH

BEFORE: THE HONORABLE LYNN W. DAVIS, JUDGE

APPEARANCES:

For the Plaintiff: BRENT D. YOUNG, ESQ.
Ivie & Young
Attorneys At Law
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P.O. Box 672
Provo, Utah 84603

For the Defendant: EDWARD OGELVIE, ESQ.
Attorney At Law
236 State Capitol
Salt Lake City, Utah 84114

PROCEEDINGS.

THE COURT: I normally would not rule from the bench respecting a case of this magnitude where the briefing has been as complex, and as long and this detailed.

But I do think that strict compliance is required. I think anything short of that frankly flies in the face of well-established case law, whether it's Richards, or Madsen or Scarborough. There's a long list of cases that have been relied upon by the State of Utah.

I've noted--and the simple question presented is that whether filing a Notice of Claim with Risk Management is deemed notice to the agency concerned under the statute. That's the narrow issue, very narrow focus in this case.

The facts involved are that the plaintiff alleges is injured on February the 4th, 1991,--

Is that the accurate date?

MR. OGELVIE: I think that's correct. Yes, Your Honor, at least I have it down that way.

THE COURT: As a result of slipping on ice on the steps of the Utah Department of

Employment Securities Building.

As a result of these alleged injuries, plaintiff claims that defendant agency was negligent. And then plaintiff, pursuant to the provisions in 63-30-11, filed a Notice of Claim with the Utah Attorney General'S Office, but did not file a Notice of Claim to the Utah Department of Employment Security. Rather, plaintiff filed the second notice with Risk Management, which is the State's self insurance agency.

Defendant then asserts that the filing of a Notice of Claim with Risk Management is defective and has not noticed-- quote, unquote-- the agency concerned, under 63-30-11(2) and (3).

That states, for the record, in pertinent part, paragraph two: " Any person having a claim for injury against a governmental entity shall file a written Notice of Claim with the entity before maintaining an action. "

Paragraph 3-B reads: " Notice of claim shall be directed and delivered to the responsible government entity according to the requirements of 63-30-12 or 63-3-13."

63-30-12 provides, in relevant part: " A

claim against the State or against its employee for an act or omission is barred unless Notice of Claim is filed with the Attorney General and the agency concerned within one year after the claim arises."

The notice provision is simply jurisdictional. Under Lamar V U.D.O.T., failure to comply with the notice provision can be raised at any time in proceedings, as pointed out by counsel both in his brief and also in argument today.

If the Court finds that the plaintiff did not comply with the notice provision, then it must dismiss the case for lack of jurisdiction.

The statute's meaning is plain on its face. The language in question-- quote, unquote--" agency concerned" is clearly meant to be the governmental agency which was responsible for the injury. In this case it would have been the Utah Department of Employment Security. They were not served with a Notice of Claim as required by law.

As a result, the Court must dismiss this case for lack of jurisdiction. Strict compliance is required. That's how I read all of the cases

involved. There's no dispute that the Utah Department of Employment Security was not served, and I think the claim is clearly barred.

I think the case law is also clear in this case. The reliance upon Richards-- the Richards case, or the Madsen case, or the Scarborough case. I think those are-- it's good law. Whether we agree with it or not or whether it seems to be fair is not at issue. There is no subject matter jurisdiction.

I don't believe there's any ambiguity in the-- in the language of the agency involved. Risk management is no more the agency involved than an insurance company that represents a home owner where an accident has occurred.

The estoppel argument I find to be weak. Certainly it does not--cannot create jurisdiction. It does not concur jurisdiction. I don't find in this case any misrepresentation on the part of the State of Utah, any fraud on the part of the State of Utah, or any representation that there would be an acceptance of service of process by Risk Management or that they otherwise were an agent under these circumstances.

Jurisdiction is never waived. The case law is controlling. I'll grant the State's Motion to Dismiss for lack of jurisdiction.

Counsel, if you will prepare an order consistent with the ruling today that relies chiefly upon the reasoning in your brief.

MR. OGELVIE: Okay.

THE COURT: Anything further in this case?

MR. YOUNG: Yes, Your Honor.

Could the order recite verbatim what the Court has found on the record?

THE COURT: Well, you may secure a copy if you wish, counsel. Normally my orders do not recite verbatim rulings that I make in open court. We sometimes misspeak. We're prone to be redundant. Orders made in open Court orally often do not flow in terms of syntax, etcetera.

MR. YOUNG: This one seemed to.

MR. OGELVIE: Your Honor, I just simply take the position-- if the Court is in agreement-- that I'll prepare the order and indicate what the Court stated that it relied on-- the reasoning and authority cited in the brief, the memorandum which we filed in support

of the motion, which I think--

THE COURT: I've drawn from some notes, counsel, as I have looked at both of the briefs. If you believe that that would be helpful, I'll provide a copy to both counsel. But I've expanded beyond those notes, based upon the arguments that were presented today.

We'll be in recess. Thank you very much.

(Whereupon, the hearing was concluded.)

* * *

STATE OF UTAH
ss.
COUNTY OF UTAH

I, Lesley Nelson, do hereby certify that I am an official court reporter in the Fourth Judicial District Court of the State of Utah;

That I was present during the entire proceedings in the before-entitled cause; that a partial transcript of the proceedings at which I was present was thereafter, under my direction, transcribed into computer-assisted transcription, and that the foregoing transcript constitutes a true and correct transcript report of the proceedings which then and there took place;

IN WITNESS THEREOF, I have hereto subscribed my hand and affixed my official seal this 15th day of January, 1993.

Lesley Nelson, C.S.R.
Utah License No. 200

NOTARY PUBLIC
LESLEY S. NELSON
784 E. SKYLARK DR.
SPANISH FK., UT 84660
COMMISSION EXPIRES
OCT. 16, 1996
STATE OF UTAH

ADDENDUM B

CHAPTER 19.

CLAIMS AGAINST INCORPORATED CITIES AND TOWNS.

AN ACT amending sections 312 and 313 of the Revised Statutes of Utah, 1898, in relation to claims against incorporated cities and towns.

Be it enacted by the Legislature of the State of Utah:

SECTION 1. That sections 312 and 313 of the Revised Statutes of Utah, 1898, be, and the same are hereby amended to read as follows:

S.L. 1903, c. 19
Sec. 312
135 P.(2d) 259

312. **Presentation of claim, time for action.** All claims against a city or town for damages or injury alleged to have arisen from the defective, unsafe, dangerous or obstructed condition of any street, alley, crosswalk, sidewalk, culvert or bridge of such city or town, or from the negligence of the city or town authorities in respect to any such street, alley, crosswalk, sidewalk, culvert or bridge, shall, within ninety days after the happening of such injury or damage, be presented to the city council of such city or board of trustees of such town, in writing, signed by the claimant or by some authorized person, and properly verified, describing the time, place, cause and extent of the damage or injury; and no action shall be maintained against any city or town as aforesaid, for injuries to person or property, unless it appears that the claim for which the action was brought was presented to the council as aforesaid, and that the council or board did not, within ninety days thereafter, audit and allow the same. Every other claim against the city or town must be presented to the city council or board of trustees, as the case may be, within one year after the last item of the account or claim accrued. Such claims must be verified, as to their correctness, by the claimant or his authorized agent. If the city council or board of trustees shall refuse to hear or consider a claim because not properly made out, notice thereof shall be given the claimant, and sufficient time allowed him to have the claim properly itemized or verified.

313. **Claims barred if not presented.** It shall be a sufficient bar and answer to any action or proceeding against a city or town, in any court, for the collection of any claim mentioned in section 312, that such claim had not been presented to the city council of such city, or to the board of trustees of such town, in the manner and within the time in section 312 specified.

CHAPTER 5.

TIME FOR FILING CLAIMS AGAINST INCORPORATED CITIES AND TOWNS.

An Act amending Sections 312 and 313 of the Revised Statutes of Utah, 1898, as amended by chapter 19 of the laws of Utah, 1903, defining the time within which claims against incorporated cities and towns must be filed.

Be it enacted by the Legislature of the State of Utah:

SECTION. 1. That sections 312 and 313 of the Revised Statutes of Utah, 1898, as amended by chapter 19 of the laws of Utah of 1903, be, and the same hereby are amended to read as follows:

312. **Claim, time for presenting. Action on.** Every claim against an incorporated city or town for damages or injury alleged to have been caused by the defective, unsafe, dangerous or obstructed condition of any street, alley, crosswalk, sidewalk, culvert or bridge of such city or town, or from the negligence of the city or town authorities in respect to any such street, alley, crosswalk, sidewalk, culvert, or bridge shall within thirty days after the happening of such injury or damage, be presented to the City Council of such city, or Board of Trustees of such town, in writing signed by the claimant or by some person by claimant authorized to sign the same, and properly verified, stating the particular time at which the injury happened, and designating and describing the particular place in which it occurred, and also particularly describing the cause and circumstances of the said injury or damages, and stating, if known to claimant, the name of the person, firm or corporation, who created, brought about or maintained the defect, obstruction or condition causing such accident or injury, and also stating the nature and probable extent of such injury and the amount of damages claimed on account of the same; such notice shall be sufficient in the particulars above specified to enable the officers of such city or town to find the place and cause of such injury from the description thereof given in the notice itself without extraneous inquiry, and no action shall be maintained against any city or town for damages or injury to person or property, unless it appears that the claim for which the action was brought was presented as aforesaid to the City Council or the Board of Trustees of the town, and that such Council or Board did not within ninety days thereafter audit and allow the same. Every claim, other than claims above mentioned against any city or town must be presented properly itemized or described and verified as to correctness by claimant or his agent,to the City Council or Board of Trustees within one year after the last item of such account or claim accrued, and if such account or claim is not properly or sufficiently itemized, or described or verified, the City Council or Board of Trustees may require the same to be made more specific as to the itemization or description, or to be corrected as to the verification thereof.

Section 12. One-Year Limitation on Actions Against State.

A claim against the state or any agency thereof as defined herein shall be forever barred unless notice thereof is filed with the attorney general of the state of Utah and the agency concerned within one year after the cause of action arises.

UTAH CODE ANN. SECTIONS 63-30-11 AND 12 (1989)

63-30-11. Claim for injury — Notice — Contents — Service — Legal disability.

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against an employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted; and

(iii) the damages incurred by the claimant so far as they are known.

(b) The notice of claim shall be signed by the person making the claim or that person's agent, attorney, parent, or legal guardian, and shall be directed and delivered to the responsible governmental entity according to the requirements of Section 63-30-12 or 63-30-13.

(4) (a) If the claimant is under the age of majority, mentally incompetent and without a legal guardian, or imprisoned at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.

(b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.

(ii) The court may not grant an extension that exceeds the applicable statute of limitations.

(c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

63-30-12. Claim against state or its employee — Time for filing notice.

A claim against the state, or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general and the agency concerned within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

PART 1

RISK MANAGER

63A-4-101. Risk manager — Appointment — Duties.

(1) The executive director shall appoint a risk manager, who shall be qualified by education and experience in the management of general property and casualty insurance.

(2) The risk manager shall:

(a) acquire and administer all property, casualty insurance, and workers' compensation insurance purchased by the state;

(b) recommend that the executive director make rules:

(i) prescribing reasonable and objective underwriting and risk control standards for state agencies;

(ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;

(iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the fund;

(iv) prescribing procedures for making claims and proof of loss; and

(v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration.

(c) implement a risk management and loss prevention program for state agencies for the purpose of reducing risks, accidents, and losses to assist state officers and employees in fulfilling their responsibilities for risk control and safety;

(d) coordinate and cooperate with any state agency having responsibility to manage and protect state properties, including the state fire marshal, the director of the Division of Facilities Construction and Management, the Department of Public Safety, and institutions of higher education;

(e) maintain records necessary to fulfill the requirements of this section;

(f) present an annual report to the executive director describing the execution of risk management responsibilities in the state;

(g) manage the fund in accordance with economically and actuarially sound principles to produce adequate reserves for the payment of contingencies, including unpaid and unreported claims, and may purchase any insurance or reinsurance considered necessary to accomplish this objective; and

(h) inform the agency's governing body and the governor when any agency fails or refuses to comply with reasonable risk control recommendations made by the risk manager.

(3) Before the effective date of any rule, the risk manager shall provide a copy of the rule to each agency affected by it.

History: C. 1953, 63-1-45, enacted by L. 1981, ch. 257, § 1; 1990, ch. 97, § 1; renumbered by L. 1993, ch. 212, § 69.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted the subsection designation "(1)" at the beginning of the section; redesignated former Subsections (1) and (2) as Subsections (2)(a) and (2)(b); inserted "and workers' compensation insurance" in present Subsection (2)(a); added Subsections (2)(b)(i) to (2)(b)(v); redesignated former Subsection (3) as Subsection (2)(c) and substituted "to assist state officers and employees in fulfilling their responsibilities for risk control and safety" for "which shall include but not be limited to examination of records, on-site inspections, and education programs" at the end thereof; redesignated former Subsection (4) as Subsection (2)(d); deleted "but not limited to" after "including" and inserted "the Division of" before "facilities" in Subsection (2)(d); redesignated former Subsections (5) and (6) as Subsections (2)(e) and (2)(f); added Subsections (2)(g), (2)(h), and (3); and made stylistic changes.

The 1993 amendment, effective May 3, 1993, renumbered this section, which formerly appeared as § 63-1-45.

63A-4-102. Risk manager — Powers.

(1) The risk manager may:

(a) enter into contracts;

(b) purchase insurance;

(c) adjust, settle, and pay claims;

(d) pay expenses and costs;

(e) study the risks of all state agencies and properties;

(f) issue certificates of coverage to state agencies for any risks covered by Risk Management Fund;

(g) make recommendations about risk management and risk reduction strategies to state agencies;

(h) in consultation with the attorney general, prescribe insurance and liability provisions to be included in all state contracts;

(i) review agency building construction, major remodeling plans, agency program plans, and make recommendations to the agency about needed changes to address risk considerations;

(j) attend agency planning and management meetings when necessary;

(k) review any proposed legislation and communicate with legislators and legislative committees about the liability or risk management issues connected with any legislation; and

(l) solicit any needed information about agency plans, agency programs, or agency risks necessary to perform his responsibilities under this part.

(2) (a) The risk manager may expend monies from the Risk Management Fund to procure and provide coverage to all state agencies and their indemnified employees, except those agencies or employees specifically exempted by statute.

(b) The risk manager shall apportion the costs of that coverage according to the requirements of this part.

History: C. 1953, 63-1-46, enacted by L. 1981, ch. 257, § 1; 1981, ch. 250, § 1; 1990, ch. 97, § 2; renumbered by L. 1993, ch. 212, § 70.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted the subsection designation (1) at the beginning of the section; redesignated former Subsections (1) and (2) as Subsections (1)(a) and (1)(b); deleted former Subsection (3), relating to adoption of regulations; redesignated former Subsections (4) and (5) as present Subsections (1)(c) and (1)(d); deleted former Subsection (6), relating to the prescribing of risks to be covered by the fund; redesignated former Subsections (7) and (8) as present Subsections (1)(e) and (1)(f); added Subsections (1)(g) to (1)(l) and (2); and made stylistic changes.

The 1993 amendment, effective May 3, 1993, renumbered this section, which formerly appeared as § 63-1-46.

63A-4-103. Risk management — Duties of state agencies.

(1) (a) Unless specifically authorized by statute to do so, a state agency may not:

(i) purchase insurance or self-fund any risk unless authorized by the risk manager; or

(ii) procure or provide liability insurance for the state.

(b) (i) Notwithstanding the provisions of Subsection (a), the State Board of Regents may authorize higher education institutions to purchase insurance for, or self-fund, risks associated with their programs and activities that are not covered through the risk manager.

(ii) The State Board of Regents shall provide copies of those purchased policies to the risk manager.

(iii) The State Board of Regents shall ensure that the state is named as additional insured on any of those policies.

(2) Each state agency shall:

(a) comply with reasonable risk related recommendations made by the risk manager;

(b) participate in risk management training activities conducted or sponsored by the risk manager;

(c) include the insurance and liability provisions prescribed by the risk manager in all state contracts, together with a statement certifying to the other party to the contract that the insurance and liability provisions in the contract are those prescribed by the risk manager;

(d) at each principal design stage, provide written notice to the risk manager that construction and major remodeling plans relating to agency buildings and facilities to be covered by the fund are available for review, for risk control purposes, and make them available to the risk manager for his review and recommendations; and

(e) cooperate fully with requests from the risk manager for agency planning, program, or risk related information, and allow the risk manager to attend agency planning and management meetings.

(3) Failure to include in the contract the provisions required by Subsection (2)(c) does not make the contract unenforceable by the state.

History: C. 1953, 63-1-46.1, enacted by L. 1990, ch. 97, § 3; renumbered by L. 1993, ch. 212, § 71.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, renumbered this section, which formerly appeared as § 63-1-46.1, and made stylistic changes in Subsection (1).

Effective Dates. — Laws 1990, ch. 97 became effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. — State Board of Regents, establishment, powers and authority, § 53B-1-103.

PART 2

RISK MANAGEMENT FUND

63A-4-201. Risk Management Fund created — Administration — Use.

(1) (a) There is created the Risk Management Fund, which shall be administered by the risk manager.

(b) The fund shall cover property, liability, fidelity, and other risks as determined by the risk manager in consultation with the executive director.

(2) The risk manager may only use the fund to pay:

(a) insurance or reinsurance premiums;

(b) costs of administering the fund;

(c) loss adjustment expenses;

(d) risk control and related educational and training expenses; and

(e) loss costs which at the time of loss were eligible for payment under rules previously issued by the executive director under the authority of Section 63A-4-101.

(3) In addition to any monies appropriated to the fund by the Legislature, the risk manager shall deposit with the state treasurer for credit to the fund:

(a) any insured loss or loss expenses paid by insurance or reinsurance companies;

(b) the gross amount of all premiums and surcharges received under Section 63A-4-202;

(c) the net refunds from cancelled insurance policies necessary to self-insure previously insured risks, with the balance of the proceeds to be refunded to the previously insured agencies;

(d) all refunds, returns, or dividends from insurance carriers not specifically covered in Subsections (3)(a), (b), and (c);

(e) savings from amounts otherwise appropriated for participation in the fund; and

(f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties related to losses paid out of the fund.

(4) All monies deposited in the fund are nonlapsing.

(5) (a) Pending disbursement, the risk manager shall provide surplus monies in the fund to the state treasurer for investment as provided in Title 51, Chapter 7, State Money Management Act.

(b) The state treasurer shall deposit all interest earned on invested fund monies into the fund.

History: C. 1953, 63-2-92, enacted by L. 1981, ch. 250, § 2; 1983, ch. 129, § 1; 1983, ch. 307, § 1; 1987, ch. 92, § 108; 1990, ch. 97, § 4; C. 1953, § 63-1-47; renumbered by L. 1993, ch. 212, § 72.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, designated the first and second sentences of Subsection (1) as Subsections (1)(a) and (1)(b); rewrote Subsection (2), which read "The fund shall be used solely for the payment of insurance or reinsurance premiums, costs of administering the fund, loss adjustment expenses, and loss costs which at the time of loss were eligible for payment under rules previously issued by the risk manager"; deleted former Subsection (4), relating to rules promulgated by the risk manager; redesignated former Subsection (5) and (6) as Subsections (4) and (5); deleted former Subsection (7), relating to management of the fund by the risk manager; deleted former Subsection (8), relating to restrictions on the purchase of insurance by any agency except as authorized by the risk manager or the State Board of Regents; and made stylistic changes.

The 1993 amendment, effective May 3, 1993, renumbered this section, which formerly appeared as § 63-1-47; deleted "of the Department of Administrative Services" after "executive director" in Subsections (1)(b) and (2)(e); substituted "63A-4-101" for "63-1-45" in Subsection (2)(e) and "63A-4-202" for "63-1-48" in Subsection (3)(b); and made a stylistic change in Subsection (5)(a).

R37-1-3.

A. In the event of an "occurrence" or "personal injury" as defined in coverages issued by the Fund, or of an act, error, omission or any other situation likely to give rise to a claim covered by the Fund, a covered entity shall give notice to the Fund, including reasonably obtainable information regarding the event, as soon as practicable.

B. If a claim is made or suit is brought against a covered entity or any of its "employees" eligible for defense or indemnification pursuant to the Governmental Immunity Act, the covered entity shall immediately forward to the Fund, or its designated agent, every demand, notice, summons or other process, or request for defense or indemnification received by it or its representative.

C. A covered entity shall cooperate with the Fund and, upon the Fund's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity because of any event with respect to which coverage is provided by the Fund, and a covered entity shall attend hearings and trials and assist in serving and giving evidence and obtaining the attendance of witnesses. A covered entity shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of an accident.

D. A covered entity shall not waive for any "employee" any duties, such as request for indemnification and cooperation in defense, required by the Governmental Immunity Act in order for the "employee" to qualify for defense and indemnification from the covered entity.

E. Failure by a covered entity to comply with any of the provisions of this rule shall be sufficient grounds for the Fund to deny coverage for a claim associated with such failure to comply.

ADDENDUM C

BRENT D. YOUNG (3584)
IVIE & YOUNG
Attorneys for Plaintiff
48 North University Avenue
P.O. Box 672
Provo, UT 84603
Telephone: 375-3000

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

HAROLD BRITTAIN, Plaintiff, vs. STATE OF UTAH, by and through UTAH DEPARTMENT OF EMPLOYMENT SECURITY aka JOB SERVICE, and THE STATE OF UTAH, by and through UTAH DIVISION OF FACILITIES, CONSTRUCTION AND MANAGEMENT, Defendants.	AFFIDAVIT OF BRENT D. YOUNG Civil No. 910400628

STATE OF UTAH)
: ss.
County of Utah)

BRENT D. YOUNG, being first duly sworn, deposes and says:

1. On or about the 4th day of February, 1991, Mr. Brittain was injured when he fell down the steps at Job Service.

2. Mr. Brittain contacted this office on or about the 11th day of February, 1991.

3. My understanding was that he had contacted individuals at Job Service and that they had reported the claim to State Risk Management.

4. My memory is that the state Risk Management contacted me sometime in mid-February. On February 27, 1991 I mailed a letter to the Risk Manager informing them I had photographs of the steps at Job Service taken shortly after the time of the incident in question. A copy of the letter is attached hereto.

5. The office of State Risk Management through their agent, one James Christensen, contacted this office by telephone. He informed me that he wanted to come and visit with me. I met with him on or about March 12, 1991, and confirmed that meeting with him by letter dated April 12, 1991. A copy of the letter is attached hereto.

6. Mr. Christensen also confirmed the March 12, 1991 meeting by letter dated April 11, 1991. A copy of the letter is attached hereto.

7. State Risk Management was served personally a notice of claim, as was the Attorney General, on 11 March, 1991, the day before my meeting with Mr. Christensen.

8. Mr. Christensen had previously represented himself to me by telephone to be an employee of Blume Associates, which was an adjusting and investigating company. He later confirmed at our meeting, and by his letter to me dated April 24, 1991, what he indicated in our first telephone contact -- that he was an agent acting for his principal, Job Service and State

Risk Management.

9. Mr. Christensen, in letters dated May 17, 1991, May 22, 1991, August 9, 1991, and August 30, 1991 continually reconfirmed that he was an agent acting for his principal Job Service and State Risk Management. Copies of these letters are attached hereto.

10. As a result of my first telephone contact with Mr. Christensen I was of the understanding and belief that the Division of Risk Management, by and through its agent Mr. Christensen, would be representing the Utah Department of Employment Security aka Job Service in handling the above-described claim; and therefore, that the Division of Risk Management was the "agency concerned" on whom a notice of claim was required to be filed pursuant to U.C.A. Section 63-30-12.

11. My understanding and belief that Mr. Christensen was an agent acting for and in behalf of Job Service and the Division of Risk Management, and that Risk Management was representing the Department of Employment Security aka Job Service, were reaffirmed by my meeting with Mr. Christensen on or about March 12, 1991, and by letters from him dated May 17, 1991, May 22, 1991, August 9, 1991, and August 30, 1991.

12. I acted promptly in filing the notices of claim on behalf of my client, the injury occurring on February 4, 1991 and the notices being served on March 11, 1991.

13. Despite vigorous pursuit of this claim, no party to this action ever indicated that the notices of claim were insufficient or misdirected, until the filing of defendant's present motion, although discussions of settlement and trial preparation and discovery have continued on by all parties throughout the ten and one-half months in which defects in the notices might have been cured and in the four months following the end of the one year limitation for filing a notice of claim.

Dated and signed this 6 day of 29, 1992.

Brent D. Young
BRENT D. YOUNG

Subscribed and sworn to before me this 29 day of June, 1992.

Margie Robbins
Notary Public

brittai3/3.3

February 27, 1991 4033

Risk Manager, State of Utah
355 W. North Temple
3 Triad Center, Suite 330
Salt Lake City, UT 84180

Re: Harold Brittain

Dear Sir:

Please be informed that I represent Harold Brittain. Mr. Brittain was injured when he was traversing the steps located at Job Service in Provo. I would appreciate the opportunity to discuss this matter with you briefly. It may be that this can be resolved short of litigation. I have in my possession photographs of the steps at or about the time the incident occurred which you may find helpful in evaluating your case.

Sincerely,

BRENT D. YOUNG

BDY:mr

notice/3.4

April 12, 1991 4033

ATTN: Jim Christensen
Bloom & Associates, Inc.
P.O. Box 21572
1888 East Fort Union Blvd.
Salt Lake City, UT 84121

Re: Harold Brittain

Dear Mr. Christensen:

We met a few weeks ago in my office. I informed you at that time that I had taken a statement from Michael R. Hawkins. I enclose of copy of Mr. Hawkins' statement and suggest that in the next month or so that you and I have a talk and see if this case can be resolved.

Sincerely,

BRENT D. YOUNG

BDY:mr
Enc.

misc/corr/c9

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BRADLEY B. BLOOM
JIM CHRISTENSEN
GARY D. TOOMB
LAVAR D. SKOUSEN

1888 E. FORT UNION BLVD
P.O. BOX 21572
SALT LAKE CITY, UTAH 84121
PHONE (801) 942-5280
FAX (801) 942-6719

RECEIVED
APR 16 1991
Ivie & Young

April 11, 1991

Brent D. Young
Ivie and Young
P.O. Box 672
Provo, Utah 84603

Re: Your Client: Harold Brittain
Loss Date: 2/04/91
Our Principal: Job Service/State Risk Management
Our File No: 12514

Dear Mr. Young:

Attached are some medical billings that your client has received and that were sent directly to me.

Since you are representing Mr. Brittain I am forwarding these billings directly to you.

This letter also follows up our meeting of 3/12/91 in which we briefly discussed your client's case. At that time you were going to be forwarding me a copy of the statement you took from the witness and further medical reports, etc., on your client's condition.

To date I have not received those items.

At your earliest opportunity would you please forward them to me.

Yours very truly,

James Christensen
Senior Adjuster

JC/bc

4053

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BRADLEY B. BLOOM
JIM CHRISTENSEN
GARY D. TOOMB
LAVAR D. SKOUSEN

1888 E. FORT UNION BLVD
P.O. BOX 21572
SALT LAKE CITY, UTAH 84121
PHONE (801) 942-5280
FAX (801) 942-6719

April 24, 1991

RECEIVED
APR 25 1991
Ivie & Young

Mr. Brent D. Young
Ivie and Young
P. O. Box 672
Provo, UT 84603

Re: Your Client: Harold Brittain
Loss Date: 2/4/91
Our Principle: Job Service/State Risk Management
Our File No.: 12514

Dear Mr. Young:

Attached is a medical billing I have received from Utah Valley Radiology in the amount of $110.00, for your client, Harold B. Brittain.

I am forwarding these billings directly to you as you are now representing Mr. Brittain.

I have also received the information that you have recently sent to me and do appreciate that.

If any further medical reports come, etc or are received, would you please forward them to me for further evaluation of this case.

Yours very truly,

James Christensen

James Christensen
Senior Adjuster

JC:ae

Att:

4033

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JIM CHRISTENSEN
GARY D TOOMB
LAVAR D SHOUSEN

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P O BOX 21572
SALT LAKE CITY UTAH 84121
PHONE (801) 942 5280
FAX (801) 942 6719

May 17, 1991

Mr. Brent D. Young
Ivie and Young
P O Box 672
Provo, Utah 84603

RE: Your client: Harold Britain
Loss Date: 2-4-91
Our Principal: Job Service/State Risk Management
Our File No: 12514

Dear Mr. Young:

This letter is to follow up our phone conversation of 4-26-91 in which you advised that your client should be finished treating around the middle of May or thereabouts.

When your client is through treating, would you please forward copies of updated medical reports, etc. so that we can further evaluate this case.

Yours very truly,

James Christensen
Senior Adjuster

JC;db

403

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BRADLEY B. BLOOM
JIM CHRISTENSEN
GARY D. TOOMB
LAVAR D. SKOUSEN

1888 E. FORT UNION BLVD
P.O. BOX 21572
SALT LAKE CITY, UTAH 84121
PHONE 801.942.5280
FAX

RECEIVED
MAY 24 1991
Young

May 22, 1991

Brent D. Young
Ivie and Young
P. O. Box 672
Provo, Utah 84603

RE: Your Client: Harold Brittain
Loss Date: 2-4-91
Our Principal: Job Service/State Risk Management
Our File No: 12514

Dear Mr. Young:

Attached are some copies of billings that I have received regarding your client's case. I am forwarding these billings to you so you will have a complete set.

Yours very truly,

James Christensen
Senior Adjuster

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PHONE (801) 942 5280
FAX (801) 942 6719

August 9, 1991

Brent D. Young
Ivie & Young
P. O. Box 672
Provo, Utah 84603

RE: Your Client: Harold Britain
Loss Date: 2-4-91
Our Principal: Job Service/State Risk Management
Our File NO: 12514

Dear Mr. Young:

This letter is to follow up our telephone conversation of 8-7-91. Attached are some billings that I have received from Utah Valley Regional Medical Center that I am forwarding directly to you for your further handling.

You advised that your client had a herniated disk and that he had approximately $7,000 in medical billings at this time. You were going to put together a package of all the medical billings, documentation, etc. as well as your demand so that I can present this to the Office of State Risk Management to see if I will still be handling this file or if they will handle it directly with you.

Yours very truly,

James Christensen
Senior Adjuster

JC:db

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FAX (801) 942-6719

August 30, 1991

Brent D. Young
Ivie and Young
P. O. Box 672
Provo, Utah 84603

RE: Your Client: Harold Brittain
Loss Date: 2-4-91
Our Principal: Job Service/State Risk Management
Our File No: 12514

Dear Mr. Young:

This is to acknowledge and thank you for the settlement brochure on your client, Harold Brittain, regarding the above captioned accident. As I have advised you on the telephone, this case is now over my contract authority with the State of Utah and so I am forwarding the file to the Office of State Risk Management, 355 West North Temple, 3 Triad Center, Suite 330, Salt Lake City, Utah 84180 for their further handling and assignment to one of their on-staff adjusters. They should be making contact with you in the very near future.

I do appreciate the assistance and the opportunity of working with you on this case.

Yours very truly,

James Christensen
Senior Adjuster

JC:db