

2005

Louise Mann v. Samuel P. Fredrickson, Riddle Services, Inc., and Does 1 Through 10 Inclusive : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

Louise Mann,

Plaintiff/Appellant,

v.

SAMUEL P. FREDRICKSON, RIDDLE
SERVICES, INC., and DOES 1
THROUGH 10 INCLUSIVE,

Defendants/Appellees.

Case No. 20050955 - CA

REPLY BRIEF OF THE APPELLANT

Appeal from the Third Judicial District, in and for Salt Lake County, State
of Utah, the Honorable Deno Himonas presiding.

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Counsel for Appellant *does* request oral argument.

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UTAH APPELLATE COURTS
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Case No. 20050955 - CA

REPLY BRIEF OF THE APPELLANT

RESPONSE TO FACTS STATED BY APPELLEES

Ms. Mann's opening brief does not merely reargue her position at trial, but rather includes those facts relevant to the issues presented before this Court. The facts which the Appellees allege are merely a renewal of Ms. Mann's trial argument are included only to the extent necessary to conform to the decision made by Judge Himonas in his denial of Ms. Mann's Motion for a New Trial.

Any perceived defect in Ms. Mann's attempt to marshal the facts was inadvertent, as it was her intent to limit the facts to those relevant to the narrow issues before this Court. Mann's inclusion of information which "hardly could be a factual statement construed in a light most favorable to Appellees" was necessary in order to support the theory which formed the basis of Judge

Himonas' decision. (See Appellees' Brief, pp. 6-7.) Throughout his brief, Fredrickson ignores the theory adopted by the trial court which was used to uphold the verdict. Rather than merely adopt Fredrickson's account of the accident in order to uphold the verdict, Judge Himonas based his decision on the facts asserted by Fredrickson *plus* a selectively removed portion of the testimony of Ms. Mann. (See R. 575, pp. 1-2). Ms. Mann included her *full statement* from which Judge Himonas selected an isolated portion to form his opinion.

Ms. Mann maintains the same position adopted by Judge Himonas; that being that Frederickson's account of the accident does not support the verdict. Mann believes his account, standing alone, contradicts the verdict. Ms. Mann would willingly adopt the Appellees' version of the facts so long as they are *complete*.

SUMMARY OF THE ARGUMENT

The trial court erred in denying Appellant's motion for judgment notwithstanding the verdict and her motion for a new trial because there was no evidence to support the finding that Ms. Mann was 100% at fault for the accident, as concluded by the jury. The trial court erred in its reliance upon isolated and contradictory facts as the sole basis for denying Appellant's motion for a new trial.

Ms. Mann has complied with the requirements imposed by the Utah Rules of Appellate Procedure, and properly presents the issues raised before this Court pursuant to actions taken in conformity with the Utah Rules of Civil Procedure.

The issue of insufficiency of the evidence is sufficiently preserved by Ms. Mann's Motion for a New Trial presented to the trial court.

The trial court erred in the giving of Jury Instruction No. 28, as it was confusing and misleading to the jury, and was not supported by sufficient evidence to serve as the defendants' theory of the case.

DISCUSSION

I. THE EVIDENCE PRESENTED AT TRIAL IS INSUFFICIENT TO SUPPORT THE JURY'S VERDICT

The record below is free from any evidence that would support a verdict apportioning 100% of the liability of the subject accident to Ms. Mann. The verdict rendered by the jury was entirely inconsistent with the evidence presented at trial, and the decisions of the trial court should accordingly be reversed.

Fredrickson attacks the Appellant's marshalling of the facts, asserting that she failed to do so as required under the Utah Rules of Appellate Procedure.

Fredrickson makes no reference in the argument portion of his brief to any specific facts omitted by Ms. Mann, but merely claims she re-argued her position at trial and failed to meet her burden. There are some references to additional facts which Fredrickson feels are relevant in his response to the facts asserted by Mann in her opening brief.

Appellees note that Mann fails to include the fact that Fredrickson was two to three car lengths behind her, had been following her for five or six blocks and that she was never aware of his following her despite traveling 10 miles per hour in a posted 45 mile per hour zone. (See Appellees' Brief at pp .6-7.) Fredrickson

erroneously asserts that Mann failed to mention the fact that Officer Brown was unaware of Utah Code Ann. §41-6-69(2) (See Appellees' Brief at p. 8); Mann made specific reference to this fact in her marshaling of the facts. (See Appellant's Opening Brief at p. 9.) Fredrickson criticizes Mann's inclusion of the fact that she "made a normal stop, and had stopped for 10 or 15 seconds before Mr. Fredrickson's vehicle struck her from behind[,]” arguing that this can in no way be construed in a light favorable to the Appellees. (See Appellees' Brief at pp. 6-7). This statement was not included to reargue the matter, but was included because this statement was relied upon by Judge Himonas in his decision finding that the evidence at trial supported the verdict. (R. 575, pp. 1-2).

Fredrickson fails to address or recognize the findings articulated by Judge Himonas throughout his brief. Judge Himonas examined the record and because the evidence clearly fails to support the verdict below, he chose to incorporate a selected a portion of the above statement made by Ms. Mann and combine it with Fredrickson's assertion that she slammed on her brakes. *Id.* Only after pairing together these isolated, dissected bits of information, gleaned from the record of a five-day trial, did Judge Himonas find that the verdict was supported by sufficient evidence. It is worth noting that this theory was entirely created by the trial court, and was not suggested as a plausible theory by either party before the trial court.

The Appellant has found it difficult if not impossible to compile evidence which supports the verdict apportioning 100% of the fault to Ms. Mann and completely exonerating Fredrickson. In an effort to ensure fulfillment of the

duty to marshal the evidence in the light most favorable to the verdict, Ms. Mann will incorporate those facts which Fredrickson implies were wrongfully omitted, and will demonstrate that there is simply insufficient evidence to justify a verdict allocating 100% of the liability to Ms. Mann. The following is a recitation of the facts relevant to liability marshaled as much as possible to support the verdict:

- On the day of the incident Fredrickson and Mann were traveling north along Redwood Road in a construction area. (R. 574, p.14.) Fredrickson, who was followed by four or five other vehicles, followed Mann for approximately five or six blocks. (R. 574, pp. 15-16.) Fredrickson entered the construction area, slowed down and continued to follow Mann when she suddenly stopped in the middle of the road such that Fredrickson did not have enough time to stop. (R. 574, p. 16.)
- At no time before the accident did Fredrickson recall taking his eyes off of Mann's vehicle. (R. 574, p. 83.) Fredrickson stated that he had no warning that Mann was going to stop, and tried to stop by slamming on his brakes; this caused his truck to fishtail and he collided with the back of Mann's vehicle at an angle. (R. 574, p. 16.) Fredrickson stated that at the time of the accident he was very surprised that Mann stopped suddenly, and could see no reason why she stopped. (R. 574, p. 17.) Mann stated that she did not see

Fredrickson's truck behind her prior to the accident and could not estimate the impact speed. (R. 573, pp. 73-74.)

- Officer Matt Brown performed the investigation on the scene of the accident and testified that the accident occurred in the middle of the road. (R. 573, pp. 34, 41.) While Officer Brown's report did mention that Fredrickson's vehicle was traveling too fast and too close, he testified that he was not aware of Utah Code Ann. §41-6-69(2), prohibiting unlawful sudden stops. (R. 573, pp. 35, 43.)

The above recitation substantially mirrors those facts set forth by Fredrickson in his brief and Mann believes the facts above are insufficient to uphold the jury's allocation of 100% of liability to Ms. Mann. Without any reference to Ms. Mann's version of the facts¹, and based solely on the information provided by Fredrickson there is no evidence which justifies the jury's apportioning 100% of the liability to Ms. Mann. The verdict completely absolves Fredrickson from any negligence, despite the duty imposed on following cars by Utah Code Ann. §41-6-62(1). Additionally, while Fredrickson contends that there were as many as five vehicles following the furniture truck he was driving, he offers no reason why he was the only one unable to control his vehicle in response to the sudden stop made by Ms. Mann, as the collision involved no other vehicles.

¹ Mann asserted that she was traveling through a construction zone, made a normal, controlled stop responding to instructions from a flagger controlling traffic, and after being stopped for 10-15 seconds was struck from behind by Fredrickson's vehicle. (R.573, pp. 18-19.)

Absent from the facts as set forth by Fredrickson is the fact that while Fredrickson *at the time of the accident* “saw no reason why [Mann] would have made such a sudden stop;” (R. 574, p. 17), he stated that once he got out of the truck, he then “first noticed there was a flagger standing approximately 20 feet from the scene of the accident.” (R. 574, p. 19.) Fredrickson makes multiple references to Mann’s lack of justification for her stop in his brief (see Appellees’ Brief at 23-25), completely disregarding the fact that there was an individual controlling traffic, whom he did not see until *after* the accident. The statement and sketch submitted by Fredrickson as Trial Exhibit 11 (attached here as Addendum A) makes reference to an individual controlling traffic, again, an individual Fredrickson was not aware of until after the accident occurred.

While Mann is required to marshal the facts in the light most favorable to the verdict, ignoring clearly relevant facts proffered by the opposing party overstates and goes beyond that duty.

Further, the trial court had all of the evidence before them in ruling on Ms. Mann’s Motion for a New Trial. Due to the lack of evidence to support the verdict in Fredrickson’s account alone, the trial judge found that his testimony coupled with a portion of what Fredrickson refers to as Ms. Mann’s “mutually exclusive theory” together were needed to justify the verdict. (R. 575, pp. 1-2.) In arriving at this conclusion, the trial court interpreted Ms. Mann’s statement that she had been stopped for 10-15 seconds prior to the impact to mean that she was aware of the flagger controlling traffic for 10-15 seconds and then slammed on her brakes at

the last moment. *Id.* This theory was created and invented by the trial court sua sponte. Frankly, even were this interpretation a valid representation of the facts, Fredrickson had a duty not only to be paying attention to the car in front of him, but to surrounding circumstances and especially to an individual controlling traffic in a construction zone. It was Fredrickson's own testimony that he did not see the flagger until after exiting his large truck *after* the accident occurred. (R. 574, p. 19.) The jury's verdict did not merely split liability or attribute the larger portion thereof to Ms. Mann, rather, the jury found her to be 100% responsible, and completely exonerated Fredrickson. This simply makes no sense based upon the evidence presented. Accordingly, Ms. Mann respectfully recommends to this Court that the rulings of the trial court should be reversed in the interest of justice.

II. THE ISSUE OF INSUFFICIENCY OF THE EVIDENCE IS PROPERLY BEFORE THIS COURT AND SHOULD BE HEARD AND DECIDED

While the Appellant did not move for a directed verdict during the trial in this matter, it is clearly appropriately presented the issue of insufficiency of the evidence to this Court. Following the return of the jury's verdict, Ms. Mann did move for a Judgment Notwithstanding the Verdict, which was denied. The trial court conceded that the denial of Mann's motion was made without reasoning or justification. (R. 575, p. 4.) Fredrickson did not object to the raising of the motion at that time, but does so for the first time here on appeal. Generally, "failure to raise the point below precludes its consideration [on appeal]." *State v. Carter*, 707

P.2d 656, 661 (Utah 1985). Having failed to object on these grounds below, Fredrickson may not raise this contention here.

Further, this argument by Fredrickson is misplaced. While the general rule precludes a party who failed to move for a directed verdict from moving for a judgment notwithstanding the verdict and appellate review, “an exception exists where plain error appears in the record and would result in a miscarriage of justice.” *Henderson v. Meyer*, 533 P.2d 290 (Utah 1975). The lack of evidence supporting the jury’s allocation of 100% of the liability in this matter to Ms. Mann, and the failure of the trial court to grant the Appellant’s Motion for Judgment Notwithstanding the Verdict results in a miscarriage of justice, and this issue should be considered by this Court.

Fredrickson contends that the entire issue of “insufficiency of the evidence” should be barred by Ms. Mann’s failure to move for directed verdict. The above noted general rule and exception apply only to those motions as brought under Rule 50 of the Utah Rules of Civil Procedure. Failure to move for directed verdict is not a procedural bar for a motion for a new trial brought pursuant to Rule 59 of the Utah Rules of Civil Procedure. Fredrickson cites to *Brigham v. Moon Lake Elec. Ass’n.*, 470 P.2d 393 (Utah 1970) as support for the assertion that failure to move for directed verdict precludes the issue of sufficiency of the evidence from appellate review. Commentary directly following those excerpts relied upon by Fredrickson demonstrates that his position overstates the rule and ignores the distinction between Rule 50 and Rule 59. The *Brigham* court stated:

“In case a party desires to challenge the verdict of a jury upon the ground that the verdict is not sustained by the evidence, he must do so by a motion for a new trial, unless during the trial he raised the legal question involved by a motion for a nonsuit or for a directed verdict. Unless he has presented either a motion for a nonsuit or for a directed verdict, the trial court has had no opportunity to pass upon the legal sufficiency of the evidence during the trial, and cannot do so unless a motion for a new trial upon the ground of the insufficiency of the evidence is presented to it.” *Brigham* 470 P.2d at 397.

Contrary to the theory advanced by Fredrickson, that failure to move for directed verdict forecloses further review of the sufficiency of the evidence, *Brigham* stands for the premise that the role of the appellate court is to review the actions of the court below, and that the issue of sufficiency of the evidence must be presented and ruled on by the trial court in order for this Court to review the matter. *Id.* This is accomplished either through a motion for directed verdict or through a motion for a new trial on grounds of insufficiency of the evidence.

The issue of insufficiency of the evidence to uphold the verdict has been appropriately raised by Ms. Mann based upon the lower court’s rulings on the motion for judgment notwithstanding the verdict and the ruling on the motion for a new trial due to insufficiency of the evidence. Ms. Mann alleges that the trial court’s failure to grant these motions constituted error, as the evidence is legally insufficient to uphold the verdict attributing 100% of the fault to Ms. Mann and completely absolving Fredrickson of any negligence. Accordingly, the issue of insufficiency of the evidence is appropriately before this Court.

III. MS. MANN HAS RAISED THE APPROPRIATE ISSUES TO CHALLENGE THE JURY VERDICT

Fredrickson argues that Mann failed to preserve the issue of proximate cause as rendered by the jury. This argument is erroneous and unnecessary. The jury's answer to the first question (the defendants' negligence) posed by the special verdict form dictated the answer to the second question (whether defendants' negligence proximately caused the plaintiff's injuries). Fredrickson asserts that a reviewing court cannot go behind the answers of the jury to special interrogatories and analyze or speculate as to the process by which the jury arrived at them. *Weber Basin v. Nelson*, 358 P.2d 81 (Utah 1960). There is no analysis involved in the review of the answers to the special verdict form completed by the jury.

Here, the question of the defendants' negligence served as a threshold inquiry, a positive answer required further action and a completely negative response to this initial interrogatory essentially ended the inquiry. The judgment on the verdict summarizes the answers to the interrogatories, and shows how no analysis is necessary by the court to understand the jury's response to the question regarding proximate cause. (See Judgment on the Verdict, attached hereto as Addendum B).

The first question stated: "Were the Defendants, Samuel P. Fredrickson and Riddle Services, Inc., negligent as alleged by Plaintiff?" The answer was "No." The second question stated: "Was Defendants' negligence a proximate

cause of the injuries sustained by the Plaintiff?” The answer here, “No.” Having answered the first question in the negative, the inquiry ended; having determined no negligence on the part of the Defendants, the jury’s answer to the remaining questions was predetermined, it is nonsensical to make a finding that 0 negligence proximately caused the injuries.

Ms. Mann maintains that the jury’s answer to the initial inquiry is inconsistent with and wholly unsupported by the evidence at trial. Based upon the manner in which the jury was presented with the questions on the special verdict form, the challenge to the jury’s verdict regarding the threshold question of liability is sufficient, and encompasses a challenge to the proximate cause verdict, and can only be cured by the reversal of the lower court’s rulings.

IV. JURY INSTRUCTION NO. 28 WAS IMPROPERLY GIVEN, AS IT WAS CONFUSING, MISLEADING AND NOT SUPPORTED BY SUFFICIENT EVIDENCE TO SERVE AS DEFENDANTS’ THEORY OF THE CASE.

The trial court erred in giving Jury Instruction No. 28. In addition to the insufficiency of the evidence presented at trial, the Appellant, respectfully requests this Court to reverse the lower court’s determinations, and order the district court to set aside the verdict, vacate the judgment and grant a new trial based on the fact that Jury Instruction number 28 was misleading, confusing, and unsupported by the evidence.

To require a new trial on the basis of an improper jury instruction, it must be shown that the erroneous instruction “was prejudicial, i.e., that it tend[ed] to

mislead the jury to the prejudice of the complaining party or insufficiently or erroneously advise[d] the jury on the law.” *Holmstrom v. C.R. England, Inc.*, 2000 UT App 239. As Appellant’s counsel argued, Instruction 28 was misleading and confusing to the extent that it was prejudicial to the Ms. Mann; it affected her substantial rights, was inconsistent with substantial justice, and justified the granting of a new trial.

A. Mann Properly Objected to Jury Instruction No. 28.

Ms. Mann took timely exception to Instruction 28 at trial, giving the trial court notice that the instruction was confusing, misleading, inappropriate to the situation, and contrary to testimony. (R. 593, p.444). In order to appeal the giving or refusal of an instruction, Utah law² requires a party to object, and distinctly state the matter to which he/she objects and specifically state the grounds for that objection. *See R.T. Nielson Co. v. Cook*, 2002 UT 11, 40 P.3d 1119, 1123. The objection made by counsel for Ms. Mann was specific enough to inform the trial court of the error in the instruction to the above standards established under Utah law. Mann raised her concern with the subject instruction on multiple occasions, and did so with the requisite degree of specificity.

² Rule 51(f) of the Utah Rules of Civil Procedure establishes protocol for objecting to jury instructions, and states that “In objecting to the giving of an instruction, a party shall identify the matter to which the objection is made and the grounds for the objection.”

B. Jury Instruction No. 28 Was Misleading to the Jury and Was Not Supported by Sufficient Evidence to Serve as Defendants' Theory of the Case.

Ms. Mann has not contended that Jury Instruction No. 28 was an improper statement of the law, but that it was inappropriate for the jury in this action. Mann agrees fully that Fredrickson was entitled to an instruction on his theory of the case. Under Utah law “all parties are entitled to have their theories of the case submitted to the jury in the court’s instructions, *provided there is competent evidence to support them.*” *Paulos v. Covenant Transportation, Inc.*, 2004 UT App. 35, 86 P.3d 752, (citing *Newsome v. Gold Cross Serv., Inc.*, 779 P.2d 692, 694 (Utah Ct.App. 1989))(emphasis added).

Ms. Mann’s contention is that Instruction number 28 was unsupported by the evidence; was confusing and misleading to the jurors, and improperly influenced the jury to her detriment. The jury was left to speculate and consider facts outside of the evidence presented to arrive at their verdict.

Instruction No. 28 contains multiple elements that create a duty, which any leading driver would presumably owe to following vehicles. These elements create a limited rather than generalized duty, one restricted to a set of circumstances not proven in the present case. One of the essential elements of the statute and corresponding instruction is *the opportunity to give a signal*.

Fredrickson presented *no* evidence at trial that Ms. Mann had an opportunity to give a signal, and that, given this opportunity to signal, she failed to do so. Since no evidence was presented to support this essential element, Fredrickson did not

offer competent evidence to support this instruction as his theory of the case and the instruction should not have been given. See *Paulos, supra*.

There is an appropriate time for the giving of an instruction like the one at issue here, but there was insufficient evidentiary basis for it in this matter. The administering of this misleading instruction, which was unsupported by the evidence was confusing to the jury, was prejudicial to the Appellant, and resulted in a verdict which was inconsistent with and contrary to the evidence. Accordingly, the submission to the jury of Instruction No. 28 was not harmless error and therefore Ms. Mann should be granted the relief sought on these grounds.

CONCLUSION

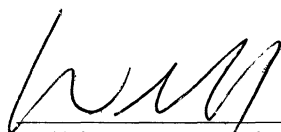
Fredrickson attempts to complicate the issues and burden this Court with arguments beyond the scope of those presented. In addition, Fredrickson does not address or even acknowledge the unorthodox manner in which the trial court upheld the verdict in denying Ms. Mann's Motion for a New Trial. There is no evidence to support a verdict allocating 100% of the fault to Ms. Mann and 0% to Mr. Fredrickson. The jury's verdict is unreasonable and unjust as it is entirely inconsistent with the evidence presented. While the trial court demonstrated sophisticated reasoning and creativity in forming its ruling on the Appellant's Motion for a New Trial, Ms. Mann maintains that the court's dissecting and contorting her testimony and combining it with that of Fredrickson to "salvage" a

verdict unsupported by the evidence are actions which should not be condoned by this Court.

Based upon the foregoing grounds, Ms. Mann respectfully requests this court to reverse the rulings below, and to issue an order instructing the trial court to set aside the verdict, vacate the corresponding judgment and grant the Appellant's motion for a new trial.

DATED this 24th day of May, 2006.

LAW OFFICES OF WILLIAM R. RAWLINGS

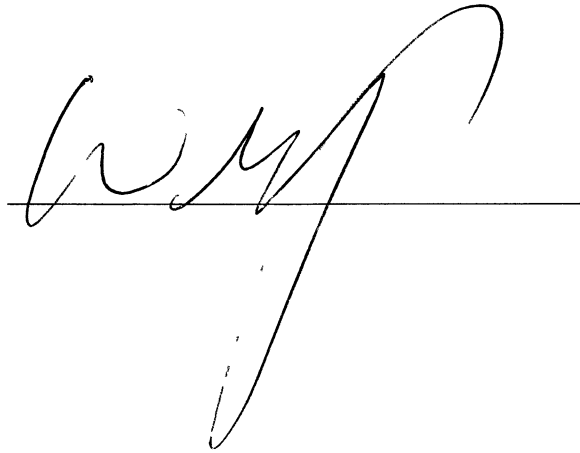
A handwritten signature in black ink, appearing to read 'W. R. Rawlings', is written over a horizontal line.

William R. Rawlings
Attorney for Plaintiff

CERTIFICATE OF MAILING

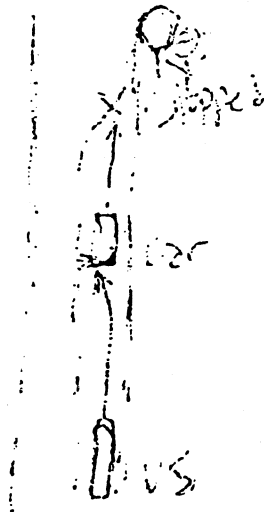
I hereby certify that a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT was hand delivered this 24th day of May, 2006, to the following:

Albert W. Gray
SMITH & GLAUSER, P.C.
7351 South Union Park Ave. #200
Salt Lake City, UT 84047

A handwritten signature in black ink, appearing to be 'AWG', is written over a horizontal line. The signature is stylized and cursive.

ADDENDUM A

Draw a diagram of how the collision occurred. Please use an arrow to indicate North.



Describe how the collision occurred (include direction of travel, drivers intent, road conditions, and type of traffic control).

Following car I noticed the
stopped quickly not enough time
for car by truck to stop



COPY

Signature _____ Witness to signature _____

READ CAREFULLY BEFORE SIGNING. I hereby
Certify that all statements made in this witness statement
Are done voluntarily and are true and I understand and
Agree that any false statement will be prosecuted to the
Full extent of the law.

1100

ADDENDUM B

FILED DISTRICT COURT LAISER
Third Judicial District

SALT LAKE COUNTY

Richard K. Glauser, #4324
Albert W. Gray, #A6095
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IN THE THIRD JUDICIAL DISTRICT COURT

LOUISE MANN,

Plaintiff,

V.

SAMUEL P. FREDRICKSON, RIDDLE
SERVICES, INC., and DOES 1
THROUGH 10 INCLUSIVE,

Defendants.

JUDGMENT ON THE VERDICT

Civil No. 030916997

Judge Robert W. Adkins

At the conclusion of Plaintiff's evidence, Plaintiff rested.

Defendants moved for Directed Verdict, pursuant to Rule 50, Utah Rules of Civil Procedure on the issues of liability, personal property claims, future medical expenses, and future loss of household services.

Plaintiff indicated that no claim was being presented for damages to personal property. The Court entered Directed Verdict in favor of Defendants on this issue. The Court denied Defendants' Motion for Directed Verdict on the remaining issues.

Defendants then presented evidence in support of their defense to Plaintiff's claims. At the conclusion of Defendants' presentation of evidence, Defendants rested.

The Court instructed the jury on the law applicable to the issues raised by the pleadings.

The Court then submitted the issues to the jury on a Special Verdict. The jury, having retired to consider the matter, and after deliberations, returned a Special Verdict as follows:

1. Were the Defendants, Samuel P. Fredrickson and Riddle Services, Inc., negligent as alleged by Plaintiff?

ANSWER: No.

2. Was Defendants' negligence a proximate cause of the injuries sustained by the Plaintiff?

ANSWER: No.

3. Was the Plaintiff contributorily negligent, as alleged by the Defendants?

ANSWER: Yes.

4. Was the Plaintiff's negligence a proximate cause of the Plaintiff's injuries?

ANSWER: Yes.

DATED this 10th day of June, 2005.

/s/ Frank Christiansen, Foreperson

Plaintiff requested that the jury be polled. In response to Special Verdict Interrogatory Number 1, at least six of the jurors indicated that they had answered "No" as to whether the Defendants, Samuel P. Fredrickson and Riddle Services, Inc., were negligent as alleged by Plaintiff. Plaintiff requested that the jury be polled in response to Interrogatory Number 2, was Defendants' negligence a proximate cause of the injuries sustained by the Plaintiff, but then abandoned the request after the second juror responded.

Based upon the Special Jury Verdict:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Judgment be entered in favor of Defendants, Samuel P. Fredrickson and Riddle Services, Inc., as a "No Cause."

THE COURT notes that Defendants filed an Offer of Judgment in the amount of \$100,000 on December 17, 2004, and the Defendants, by virtue of the No Cause and the Offer of Judgment, are entitled to their taxable costs from the inception of the case to be established upon submission of affidavits of the attorneys of Plaintiff and Defendants to obtain such costs submitted to the Court for approval.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Defendant is awarded his taxable costs, to be established pursuant to Rule 54, Utah Rules of Civil Procedure, to

be established upon submission of an affidavit of Defendants' attorney establishing such costs, submitted to the Court for approval.

DATED this 24 day of June, 2005.

BY THE COURT:

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Honorable Robert W. Adkins
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused to be sent via facsimile transmission and mailed, postage prepaid, this 15th day of June, 2005, a true and correct copy of the foregoing JUDGMENT ON THE VERDICT to the following:

William R. Rawlings, Esq. (Fax: 495-2122)
LAW OFFICE OF WILLIAM R. RAWLINGS
11576 South State St, #401
Draper, UT 84020

Kathy Chen