

1994

Marle Lee Allred v. Ann Anastasion, Sean Anastasion, Pacificorp Electric Operation, Aetna Health Plans : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MERLE LEE ALLRED,)
)
Plaintiff, Counterclaim)
Defendant and Appellee,)
v.)
)
ANN ANASTASION, SEAN ANASTASION)
)
Defendants, Crossclaim)
Defendants and Appellees,)
v.)
)
PACIFICORP)
ELECTRIC OPERATION, and)
AETNA HEALTH PLANS,)
)
Defendants, Crossclaim)
Plaintiffs, Counterclaim)
Plaintiffs and Appellants.)

940535

Case No. 940535-CA

Priority: 29(b)(15)

BRIEF OF APPELLANTS

APPEAL FROM ORDER AND JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH
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IN THE UTAH COURT OF APPEALS

MERLE LEE ALLRED,)	
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Plaintiff, Counterclaim)	
Defendant and Appellee,)	
v.)	
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ANN ANASTASION, SEAN ANASTASION)	
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Defendants, Crossclaim)	
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v.)	Case No. 940535-CA
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PACIFICORP)	Priority: 29(b)(15)
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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF JURISDICTION	1
ISSUES PRESENTED AND STANDARD OF REVIEW	1
ISSUE NO. 1	1
ISSUE NO. 2	1
ISSUE NO. 3	2
DETERMINATIVE RULES OF CIVIL PROCEDURE.	2
STATEMENT OF THE CASE	3
I. The Parties, The Nature Of The Case, Statement Of Facts, And The Course Of Proceedings And Disposition In The Lower Court	3
SUMMARY OF ARGUMENT	5
ARGUMENT.	7
I. CROSSCLAIM PLAINTIFFS' ACCEPTANCE OF CROSSCLAIM DEFENDANT'S OFFER OF JUDGMENT WAS VALID AND BINDING UNDER UTAH LAW, AND THAT ACCEPTANCE SHOULD BE ENFORCED.	7
1. Crossclaim Defendant's Offer of Judgment Created, As A Matter Of Law, The Power Of Acceptance In Crossclaim Plaintiffs	7
a. The Objective Evidence And The Utah Rules Of Civil Procedure Require A Finding That Crossclaim Plaintiffs' Acceptance Of The Offer Of Judgment Was Valid And Binding.	9
b. Crossclaim Plaintiffs' Acceptance Of The Offer Of Judgment Was Proper And Reasonable.	12
II. IT WAS ERROR, UNDER UTAH LAW, FOR THE TRIAL COURT TO SET ASIDE THE AUGUST 4, 1993 JUDGMENT ENTERED AGAINST CROSSCLAIM DEFENDANT AND THE TRIAL COURT'S RULING SHOULD BE REVERSED	13

1. Crossclaim Defendant Was Not Entitled To Relief From The Judgment Properly Obtained Pursuant To Rule 60(b), Utah Rules Of Civil Procedure	13
III. THE COSTS AWARDED TO CROSSCLAIM DEFENDANT SHOULD BE ASSESSED SOLELY AGAINST ORIGINAL PLAINTIFF AND NOT CROSSCLAIM PLAINTIFFS. .	14
CONCLUSION.	15
<u>ADDENDUM</u>	
OFFER OF JUDGMENT	18
ACCEPTANCE OF OFFER OF JUDGMENT	20
JUDGMENT.	22
NOTICE OF ENTRY OF JUDGMENT AGAINST ANN ANASTASION. . . .	29
CORRECTED NOTICE OF ENTRY OF JUDGMENT AGAINST ANN ANASTASION.	31
MINUTE ENTRY.	36
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.	38
JUDGMENT ON JURY VERDICT.	43
MEMORANDUM OF COSTS AND DISBURSEMENTS	46

TABLE OF AUTHORITIES

CASES

<u>Allen v. Bissinger & Co.</u> , 62 Utah 226, P. 539 (1923)	10
<u>Bailey v. Call</u> , 767 P.2d 138 (Utah Ct. App.), <u>cert. denied</u> , 773 P.2d 45 (Utah 1989)	1
<u>Birch v. Birch</u> , 711 P.2d 1114 (Utah Ct. App. 1989)	1
<u>Blair v. Shanahan</u> , 795 F.Supp. 309 (N.D.Cal. 1992)	11, 13
<u>Equitable Life & Cas. Ins. Co. v. Ross</u> , 849 P.2d 1187 (Utah Ct. App. 1993)	1
<u>Frampton v. Wilson</u> , 605 P.2d 771 (Utah 1980)	2
<u>Hatanaka v. Struhs</u> , 738 P.2d 1052 (Utah Ct. App. 1987)	2
<u>Herm Hughes & Sons, Inc. v. Quintek</u> , 834 P.2d 582 (Utah Ct. App. 1992)	1
<u>Jaramillo v. Farmers Ins. Group</u> , 669 P.2d 1231 (Utah	10
<u>Larsen v. Collina</u> , 684 P.2d 52 (Utah 1984)	2
<u>Morgan v. Morgan</u> , 795 P.2d 684 (Utah Ct. App. 1990)	2
<u>Said v. Virginia Com. Univ/Medical College</u> , 130 F.R.D. 60 (E.D. Va. 1990)	10, 11, 12
<u>Suniland Corp. v. Radcliffe</u> , 576 P.2d 847 (Utah 1978)	14, 15

STATUTES

Utah Code Ann. § 78-2a-3(k)(Supp. 1994)	1
---	---

SECONDARY AUTHORITIES

<u>Corbin on Contracts</u> , Section 11, at 25 (1963)	9
Restatement, Contracts (Second) § 24	9
Wright & Miller, <u>Federal Practice and Procedure</u> , §3001	9

UTAH RULES OF CIVIL PROCEDURE

Utah R. Civ. P. 68(b) 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15	
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STATEMENT OF JURISDICTION

The Utah Court Of Appeals has jurisdiction in this matter pursuant to Section 78-2a-3(k), Utah Code Ann. (Supp. 1994).

ISSUES PRESENTED AND STANDARD OF REVIEW

There are three issues presented in this appeal:

ISSUE NO. 1: Does a crossclaim-defendant's personal service via hand-delivery on a crossclaim-plaintiff of an offer of judgment, pursuant to Rule 68(b) of the Utah Rules of Civil Procedure, that does not specify or limit who can accept the offer create the power of acceptance in that crossclaim-plaintiff?

This issue raises a question of law and the standard of review is a correction of error standard. Herm Hughes & Sons, Inc. v. Quintek, 834 P.2d 582, 583 (Utah Ct. App. 1992); Equitable Life & Cas. Ins. Co. v. Ross, 849 P.2d 1187, 1192 (Utah Ct. App. 1993); Bailey v. Call, 767 P.2d 138, 139 (Utah Ct. App.), cert. denied, 773 P.2d 45 (Utah 1989).

ISSUE NO. 2: Did the trial court err in granting relief from a judgment by setting aside the judgment previously entered by the court against a crossclaim-defendant pursuant to a Utah R. Civ. P. 68(b) offer of judgment which was accepted by a crossclaim-plaintiff in compliance with Utah R. Civ. P. 68(b)?

The standard of review for this issue is the abuse of discretion standard. Birch v. Birch, 711 P.2d 1114 (Utah Ct. App. 1989); Larsen v. Collina, 684 P.2d 52 (Utah 1984).

ISSUE NO. 3: Can a trial court award costs against a crossclaim-plaintiff which relate solely to claims raised by plaintiff, are irrelevant to claims raised by crossclaim-plaintiff, and were incurred prior to crossclaim-plaintiff becoming a party to the action?

The standard of review for this issue is the abuse of discretion standard. Morgan v. Morgan, 795 P.2d 684, 686 (Utah Ct. App. 1990); Hatanaka v. Struhs, 738 P.2d 1052, 1055 (Utah Ct. App. 1987); Frampton v. Wilson, 605 P.2d 771, 773-774 (Utah 1980).

DETERMINATIVE RULES OF CIVIL PROCEDURE

Rule 68(b), Utah Rules of Civil Procedure, is determinative of issues 1 and 3. Rule 68(b) provides in pertinent part:

Rule 68. Offer of Judgment.

. . .
(b) **Offer before trial.** At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money . . . specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. . . . If the judgment finally obtained by the offeree is not more favorable

than the offer, the offeree must pay the costs incurred after the making of the offer.
. . .

Utah R. Civ. P. 68(b) (emphases added).

STATEMENT OF THE CASE

I. The Parties, The Nature Of The Case, Statement of Facts, And The Course Of Proceedings And Disposition In The Lower Court.

Appellee Merle Allred ("Original Plaintiff") brought this negligence action against Appellee Ann Anastasion ("Crossclaim Defendant")¹ for injuries suffered on Crossclaim Defendant's property. (Record pp. 2-5).² On May 20, 1992, Appellants Pacificorp Electric Operation and Aetna Health Plans (collectively "Crossclaim Plaintiffs") were brought into this action by Original Plaintiff's amended complaint -- Pacificorp as Original Plaintiff's health insurer and Aetna as administrator of that plan. (Record pp. 57-60).

On June 29, 1992, Crossclaim Plaintiffs became an adverse party to Crossclaim Defendant by filing a crossclaim for reimbursement of medical expenses Crossclaim Plaintiffs had paid to Original Plaintiff as a result of Crossclaim Defendant's

¹ A negligence claim was also brought against Appellee Sean Anastasion. The claim against Mr. Anastasion is not at issue in this appeal as Mr. Anastasion did not participate in the trial or other proceedings because a default judgment, which has since been set aside, was entered against him on August 2, 1994.

² All citations are to the page number of the record on appeal as paginated by the Third District Court Clerk, Salt Lake County.

negligence. (Record pp. 72-77).³ Crossclaim Plaintiffs also claimed interest on this sum, and their costs and attorneys' fees. (Record pp. 72-77).

On July 27, 1993 Crossclaim Defendant served by hand-delivery on Crossclaim Plaintiffs a Rule 68(b) offer of judgment. (Record pp. 135-138). By its terms, that offer of judgment was to be open and available to be accepted for ten days. (Record pp. 135-138). That offer of judgment provided, in pertinent part as follows:

Pursuant to Rule 68(b) of the Utah Rules of Civil Procedure, Defendant Ann Anastasion, by and through her attorney, offers to allow judgment to be taken against it in the amount of Seventeen Thousand Five Hundred and No/100 Dollars (\$17,500.00) together with costs presently accrued.

Pursuant to Rule 68 of the Utah Rules of Civil Procedure, this offer will remain open and available to be accepted for ten (10) days. If not accepted in writing within that time period it will be deemed rejected and withdrawn and Defendant Ann Anastasion intends to introduce it in order to recover costs incurred.

(Record pp. 135-138).

On July 29, 1993, well within the 10-day acceptance period, Crossclaim Plaintiffs accepted Crossclaim Defendants' offer of judgment by sending her a Notice of Acceptance of her Offer of Judgment. (Record pp. 145-156). Further, in compliance with Utah R. Civ. P. 68(b), Crossclaim Plaintiffs filed with the trial court both the Offer of Judgment and Notice of Acceptance, together with proof of service. (Record pp. 135-138, 145-146).

³ Crossclaim Plaintiffs also filed a counterclaim against Original Plaintiff which is not at issue in this appeal.

In accordance with Crossclaim Plaintiffs acceptance of the offer of judgment, the trial court entered judgment against Crossclaim Defendant on August 4, 1993. (Record pp. 190-198, 219-225).

On September 28, 1993 the trial court, upon Crossclaim Defendant's Motion for Relief from Judgment, signed a Findings of Fact, Conclusions of Law and Order which, inter alia, vacated the judgment against Crossclaim Defendant which was based on Crossclaim Plaintiffs' acceptance of the Offer of Judgment. (Record pp. 361-370).

The matter was tried to a jury on February 7-9, 1994. Based on the jury verdict, the trial court entered judgment in favor of Crossclaim Defendant and against Original Plaintiff and Crossclaim Plaintiffs. (Record pp. 681-683). The trial court awarded Crossclaim Defendant's costs, as set forth in the Memorandum of Costs and Disbursements filed March 2, 1994, (Record pp. 678-680), without specifying against whom they were assessed even though all costs either were incurred prior to Crossclaim Plaintiffs becoming parties to this action or were related solely to issues which were not in dispute between Crossclaim Plaintiffs and Crossclaim Defendant. (Record pp. 678-680). Crossclaim Plaintiffs filed their Notice of Appeal on April 5, 1994. (Record pp. 774-775).

SUMMARY OF ARGUMENT

Crossclaim Defendant's hand-delivery to her adverse party, Crossclaim Plaintiffs, of an offer of judgment created the power of acceptance in Crossclaim Plaintiffs. Accordingly,

Crossclaim Plaintiffs' acceptance of the offer of judgment pursuant to Utah R. Civ. P. 68(b) was proper as was the judgment entered against Crossclaim Defendant as a result. As a matter of law Crossclaim Defendant's intent in delivering the offer of judgment to Crossclaim Plaintiff, as measured objectively by the words of the offer itself, requires that the judgment entered as a result of the acceptance of the offer of judgment be enforced.

Crossclaim Defendant's attempt to renege the offer of judgment based on some subjective, unexpressed, secret intent that the offer was not available to Crossclaim Plaintiffs is, as a matter of law, improper. Particularly given that, according to the terms of the offer, Crossclaim Defendant stood ready to reap the benefits of recovering post-offer costs in the event the offer of judgment was not accepted. Crossclaim Defendant's offer must be strictly construed against her, the offeror, and had she truly intended to limit which adverse party could accept the offer, she could have done so easily by expressing that in her offer. That was not expressed because that was not intended.

Additionally, Crossclaim Plaintiffs' acceptance of the offer of judgment was not unreasonable. Their claims exceeded the amount of the offer even if the Court were to assume costs and attorneys' fees would not be recovered. Moreover, the benefit to the Counterclaim Defendant if the offer was not accepted was very significant. Thus, it was improper for the trial court to fail to recognize that a valid offer was made to

Crossclaim Plaintiffs, which they accepted and they are entitled to the benefits of that agreement. Counterclaim Defendant cannot be allowed to escape a binding contract merely because it does not turn out as beneficial as she initially had hoped, particularly where there is no evidence for relieving her from the consequences of that agreement.

Finally, the award of Crossclaim Defendant's costs should be assessed solely against the Original Plaintiff as all assessed costs related exclusively to the claims raise by Original Plaintiff, were irrelevant to the claims raised by Crossclaim Plaintiffs, and/or were incurred prior to Crossclaim Plaintiffs becoming parties to this action.

ARGUMENT

I. CROSSCLAIM PLAINTIFFS' ACCEPTANCE OF CROSSCLAIM DEFENDANT'S OFFER OF JUDGMENT WAS VALID AND BINDING UNDER UTAH LAW, AND THAT ACCEPTANCE SHOULD BE ENFORCED.

1. Crossclaim Defendant's Offer Of Judgment Created, As A Matter Of Law, The Power Of Acceptance In Crossclaim Plaintiffs.

Utah R. Civ. P. 68(b) provides a mechanism whereby "a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money . . . specified in his offer." Rule 68(b) further provides the adverse party can accept the offer of judgment by serving written notice that the offer is accepted. Id. Pursuant to that Rule, Crossclaim Defendant hand-delivered to her adverse party,

Crossclaim Plaintiff, a Rule 68(b) Offer of Judgment which read in part:

Pursuant to Rule 68(b) of the Utah Rules of Civil Procedure, Defendant Ann Anastasion, by and through her attorney, offers to allow judgment to be taken against it in the amount of Seventeen Thousand Five Hundred and No/100 Dollars (\$17,500.00) together with costs presently accrued.

Pursuant to Rule 68 of the Utah Rules of Civil Procedure, this offer will remain open and available to be accepted for ten (10) days. If not accepted in writing within that time period it will be deemed rejected and withdrawn and Defendant Ann Anastasion intends to introduce it in order to recover costs incurred.

(Record pp. 135-138).

Crossclaim Defendant's offer of judgment was served on Crossclaim Plaintiffs, her adverse party, and expressly provided that she was offering to allow judgment to be taken against her pursuant to Rule 68(b). Crossclaim Plaintiffs could and did accept Crossclaim Defendant's offer of judgment by filing the offer, notice of acceptance and proof of service with the court as required under Rule 68(b). (Record pp. 139-140, 145-146). Finally and also under Rule 68(b), judgment was entered against Crossclaim Defendant and in favor of Crossclaim Plaintiff pursuant to Crossclaim Plaintiffs' acceptance of the offer of judgment. (Record at pp. 190-198).

a. The Objective Evidence And The Utah Rules Of Civil Procedure Require A Finding That Crossclaim Plaintiffs' Acceptance Of The Offer Of Judgment Was Valid And Binding.

An offer, such as that contained in Crossclaim Defendant's offer of judgment, is controlled by the expressed intention of the offeror. See Corbin on Contracts, Section 11, at 25 (1963). Put another way, an offer is "a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to the bargain is invited and will conclude it." Restatement, Contract (Second) § 24. The clear and expressed intention of Crossclaim Defendant's offer of judgment was to allow Crossclaim Plaintiff or Original Plaintiff, or both, to take judgment against her or risk the potential of paying the post-offer costs incurred by Crossclaim Defendant. Regardless of whether one or both adverse parties accepted the offer of judgment, Rule 68's purposes of encouraging settlements, avoiding protracted litigation and diminishing the burden of litigation would be achieved. Wright & Miller, Federal Practice and Procedure, §3001.

Crossclaim Defendant's offer of judgment clearly and unequivocally created the power of acceptance in Crossclaim Plaintiff such that their acceptance was reasonable and required the entering of judgment against the Crossclaim Defendant and in favor of Crossclaim Plaintiffs. As the Utah Supreme Court has stated:

The apparent mutual assent of the parties, essential to the formation of a contract, must be gathered by the language employed by

them, and the law imputes to a person an intention corresponding to the reasonable meaning of its words and acts. It judges of his intentions by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts judged by reasonable standards manifests an intention to agree to the matter in question, that agreement is established and it is immaterial what may be the real but unexpressed state of his mind upon the subject.

Jaramillo v. Farmers Ins. Group, 669 P.2d 1231, 1233 (Utah 1983)(emphasis added)(quoting Allen v. Bissinger & Co., 62 Utah 226, 219 P. 539, 541-42 (1923)).

The language employed by Crossclaim Defendant in her offer of judgment makes her intention clear and the reasonable meaning of that offer conclusively established that Crossclaim Plaintiffs properly accepted the offer of judgment and obtained judgment. Crossclaim Defendant's after the fact claim that she subjectively intended something different than the clear, objective language of the offer is irrelevant and does not constitute mistake. Jaramillo, 669 P.2d at 1231.

To allow a Rule 68 offeror to inject ambiguities into its offer after the fact would be tantamount to requiring the offeree to guess what meaning a Court will give to the terms of that offer before deciding whether to accept it or not. . . . Because [the rule 68 offeree is bound to pay post-offer costs if he does not unreservedly accept the offer,] he is entitled to construe the offer's terms strictly, and Courts should be reluctant to allow the offeror's extrinsic evidence to affect that construction.

Said v. Virginia Com. Univ/Medical College, 130 F.R.D. 60, 63 (E.D. Va. 1990)(citations omitted).

Had the Crossclaim Defendant actually intended to make the offer to a particular adverse party, she could easily have

done so. The fact that she did not speak very loudly and the offer of judgment must be construed against the offeror. Id.; see also Blair v. Shanahan, 795 F.Supp. 309, 316 (N.D.Cal. 1992).

In addition to the clear language of the offer, the Utah Rules of Civil Procedure require a finding that the Crossclaim Plaintiffs could properly accept Crossclaim Defendant's offer of judgment. Rule 68(b) does not limit its use of the term "adverse party" to only certain adverse parties. The Rule clearly applies to Crossclaim Plaintiffs and the Crossclaim Defendant in this case clearly intended it to apply to them as well.

In addition to the language of the actual offer of judgment and Rule 68(b), the unique characteristics of an offer of judgment require that Crossclaim Plaintiffs be found to have properly accepted the offer. Had the Crossclaim Plaintiffs rejected the offer of judgment and subsequently received a judgment less favorable than the offer, Crossclaim Defendant would have, as the express language of her offer indicates, undoubtedly sought to recover all of her costs accrued subsequent to the rejection of the offer from Crossclaim Plaintiffs. Crossclaim Plaintiffs, under the offer and Rule 68(b), were subjected to the "draconian choice" of accepting the offer or going to trial and running the risk of obtaining a less favorable judgment and paying the defending party's post-offer costs. E.g., Said, 130 F.R.D. at 63. Crossclaim Defendant cannot renege the offer she made to Crossclaim Plaintiffs when, at the same

time, she would have taken advantage of the Crossclaim Plaintiffs failure to accept the offer had they not done so and received a lesser amount at trial.

b. Crossclaim Plaintiffs' Acceptance Of The Offer Of Judgment Was Proper And Reasonable.

There is no dispute that Crossclaim Plaintiffs' acceptance of Crossclaim Defendant's offer of judgment was technically proper and in compliance with the Utah Rules of Civil Procedure. Moreover, their acceptance of the \$17,5000 offer of judgment was not unreasonable as a matter of law. Crossclaim Defendant will undoubtedly argue that Crossclaim Plaintiffs' initial reimbursement claim, standing by itself, was for less than \$17,500. That argument is misleading and irrelevant. The Crossclaim Plaintiffs sought relief in addition to the mere reimbursement of their outlays as they were also entitled to interest, costs, and possibly attorney's fees. When interest alone was added to their initial claim, Crossclaim Plaintiffs were entitled to more than \$17,500 which was the amount of the offer of judgment. Moreover, the language of the offer clearly indicates Crossclaim Defendant was seeking to utilize the "draconian sword" of Rule 68(b) which requires the non-accepting party to pay all post-offer costs. E.g., Said, 130 F.R.D. at 63. Thus, whether the value of Crossclaim Plaintiffs' claims or the benefit to Crossclaim Defendant's use of the offer of judgment is the basis against which reasonableness is measured, the Court can reach but one conclusion: Crossclaim Plaintiffs' acceptance of the offer of judgment was, as a matter of law, not unreasonable.

II. IT WAS ERROR, UNDER UTAH LAW, FOR THE TRIAL COURT TO SET ASIDE THE AUGUST 4, 1993 JUDGMENT ENTERED AGAINST CROSSCLAIM DEFENDANT AND THE TRIAL COURT'S RULING SHOULD BE REVERSED.

1. Crossclaim Defendant Was Not Entitled To Relief From The Judgment Properly Obtained Pursuant To Rule 60(b), Utah Rules Of Civil Procedure.

The trial court, in setting aside the judgment entered against Crossclaim Defendant based on the acceptance of her offer of judgment, ruled that that judgment was based on mistake. (Record at p. 323, 935-953). This decision was manifest error.

There was no evidence introduced from which the trial court could have derived the intent of the Crossclaim Defendant to be anything different from the offer which, by its terms and the applicable procedural rules, was not limited to the Original Plaintiff.

While there is no Utah law addressing this issue, other courts have refused to set aside judgments entered pursuant to Rule 68 when the offeror attempts to change or limit its offer after it has been accepted. E.g., Blair v. Shanahan, 795 F.Supp. 309, 315-316 (N.D.Cal. 1992). In fact, the analysis of the Blair case is very helpful. After recognizing the draconian choice inherent in Rule 68 offers of judgment, the court recognizes that the power of Rule 68 should not be increased "by allowing an offer that had been accepted to be revised to reflect post-acceptance changes in the offeror's legal analysis concerning an issue. . . ." Id. at 316. The trial court's abrogation of the contract entered into between the parties pursuant to Rule 68 should not be set aside merely because the Crossclaim Defendant

now deems the contact inexpedient, unwise, or unable to achieve her initial purpose of forcing Crossclaim Plaintiffs to pay the post-offer costs following their non-acceptance of the offer.

Id. The Rules regarding offers of judgment, the language and intent of the parties, and the law requires that the Crossclaim Plaintiffs' acceptance of the offer of judgment was valid and binding, and judgment should be entered against the Crossclaim Defendant for \$17,500.

III. THE COSTS AWARDED TO CROSSCLAIM DEFENDANT SHOULD BE ASSESSED SOLELY AGAINST ORIGINAL PLAINTIFF AND NOT CROSSCLAIM PLAINTIFFS.

Following trial of the matter, the trial court awarded costs to Crossclaim Defendant but failed to assess those costs solely against Original Plaintiff. All of the costs awarded (i.e., those set forth in the Memorandum of Costs and Disbursements (Record pp. 678-683)) related solely to the claims raised by Original Plaintiff, were irrelevant to the claims raised by Crossclaim Plaintiffs, and/or were incurred prior to Crossclaim Plaintiffs becoming parties to this action. Under those circumstances, Utah law requires the costs be assessed solely against Original Plaintiff. Suniland Corp. v. Radcliffe, 576 P.2d 847, 849 (Utah 1978).

The Utah Supreme Court made it clear in Suniland that, where as here, there are no "additional" costs incurred as a result of joining another party the original opposing party should be solely assessed all costs incurred by the prevailing party. The facts in Suniland are for all intents and purposes

identical to the instant case, and it follows the identical results should be reached -- Crossclaim Defendant's costs should be assessed solely against Original Plaintiff and not Crossclaim Plaintiffs. In Suniland, the Supreme Court held that costs should not be assessed against an insurance company that is joined when the alleged additional costs are merely the same costs necessary to try the action against the original opposing party. Suniland, 576 P.2d at 849. This case is even stronger. There was no dispute as to any issues involving Crossclaim Plaintiffs. All of the costs awarded by the trial court related solely to claims raised by Original Plaintiff and were irrelevant to claims raised by Crossclaim Plaintiffs. Moreover, some of the costs were incurred even before Crossclaim Plaintiffs became parties to this action. In sum, it was error under Utah law for the trial court to fail to assess all costs solely against Original Plaintiff and Crossclaim Plaintiffs are entitled to a ruling from this Court that does just that.

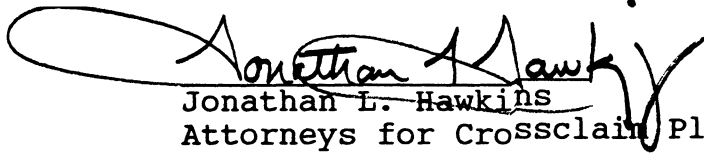
CONCLUSION

Pursuant to Utah R. Civ. P. 68(b) the Court, as a matter of law, should enter judgment against Crossclaim Defendant in favor of Crossclaim Plaintiff for \$17,500. In the alternative, the Court should vacate the trial court's September 28, 1993 setting aside of the \$17,500 judgment entered against Crossclaim Defendant as a result of the Crossclaim Plaintiffs' acceptance of her offer of judgment, and order the trial court to reenter the same. Finally, the Court should Order that the costs

awarded to Crossclaim Defendant be assessed solely against
Original Plaintiff.

DATED this 4th day of November, 1994.

Atkin & Lilja

A handwritten signature in black ink, appearing to read "Jonathan L. Hawkins". The signature is written over a horizontal line that separates it from the printed name below.

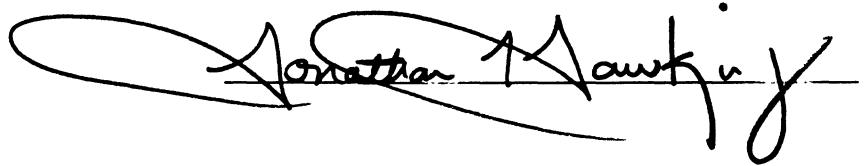
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing BRIEF
OF APPELLANTS was mailed, postage prepaid, this 4th day of
November, 1994 to the following:

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,	:	OFFER OF JUDGMENT
Plaintiff,	:	
vs.	:	
	:	Civil No. 910906462PI
ANN ANASTASION and SHAWN	:	
ANASTASION,	:	Judge Timothy R. Hanson
Defendants.	:	

Pursuant to Rule 68(b) of the Utah Rules of Civil Procedure, Defendant Ann Anastasion, by and through her attorney, offers to allow judgment to be taken against it in the amount of Seventeen Thousand Five Hundred and No/100 Dollars (\$17,500.00) together with costs presently accrued.

Pursuant to Rule 68 of the Utah Rules of Civil Procedure, this offer will remain open and available to be accepted for ten (10) days. If not accepted in writing within that time period it

will be deemed rejected and withdrawn and Defendant Ann Anastasion intends to introduce it in order to recover costs incurred.

DATED this 21st day of July, 1993.

SCALLEY & READING

Attorneys for Defendant

By: 
STEVEN B. SMITH

CERTIFICATE OF HAND DELIVERY

I hereby certify that on the 21st day of July, 1993, a true and correct copy of the foregoing Offer of Judgment was hand delivered to the following:

Kelly R. Sheffield, Esq.
SHAPIRO & ROBINSON
4516 South 700 East, Suite 360
Salt Lake City, Utah 84107

Blake S. Atkin, Esq.
350 South 400 East, #114
Salt Lake City, Utah 84111

Sean Anastasion
Defendant Pro Se
364 East 600 South
Salt Lake City Utah 84111



Blake S. Atkin #4466
David J. Bonner #5040
350 So. 400 East #114
Salt Lake City, Utah 84111
Telephone (801) 533-0300

Attorneys for Defendants
Pacificorp and Aetna

FILED
DISTRICT COURT

JUL 29 11 21 AM '93

THIRD DISTRICT
BY _____ CLERK

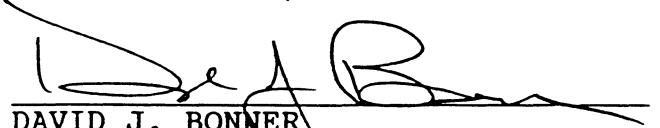
IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,)	
)	
Plaintiff,	)	ACCEPTANCE OF OFFER
	)	OF JUDGMENT
v.)	
)	
ANN ANASTASION, SHAWN	)	Civil No. 910906462PI
ANASTASION, PACIFICORP)	
ELECTRIC OPERATION, and	)	Judge Timothy R. Hanson
AETNA HEALTH PLANS,)	
)	
Defendants.)	

Pursuant to Rule 68(b) of the Utah Rules of Civil Procedure and Defendant Ann Anastasion's Offer of Judgment dated July 27, 1993, Cross-Claimants Pacificorp Electric Operations and Aetna Health Plans accept Defendant Ann Anastasion's offer to allow judgment to be taken against her in the amount of Seventeen Thousand Five Hundred and no/100 Dollars (\$17,500.00), together with costs presently accrued.

DATED this 29th day of July, 1993.

BLAKE S. ATKIN, P.C.


DAVID J. BONNER
Attorney for Pacificorp Electric
Operations & Aetna Health Plans

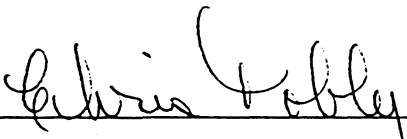
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing
ACCEPTANCE OF OFFER OF JUDGMENT was mailed, postage prepaid, this
29th day of July, 1993, to the following:

Steven B. Smith
SCALLEY & READING
261 E. 300 South, Suite 200
Salt Lake City, Utah 84111
Attorney for Defendant-Crossdefendant
Ann Anastasion

Shawn Anastasion
364 East 600 South
Salt Lake City, Utah 84102
Defendant-Crossdefendant Pro Se

Kelly R. Sheffield
4516 South 700 East Suite 360
Salt Lake City, Utah 84107
Attorney for Plaintiff-Counterdefendant
Merle Lee Allred



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Anastasion in the amount of Seventeen Thousand Five Hundred and no/100 Dollars (\$17,500.00), together with costs presently accrued.

DATED this 4 day of August, 1993.

BY THE COURT:

181

Hon. Timothy R. Hanson
Third District Judge

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing JUDGMENT was mailed, postage prepaid, this _____ day of _____, 1993, to the following:

Steven B. Smith
SCALLEY & READING
261 E. 300 South, Suite 200
Salt Lake City, Utah 84111
Attorney for Defendant-Crossdefendant
Ann Anastasion

Shawn Anastasion
364 East 600 South
Salt Lake City, Utah 84102
Defendant-Crossdefendant Pro Se

Kelly R. Sheffield
4516 South 700 East Suite 360
Salt Lake City, Utah 84107
Attorney for Plaintiff-Counterdefendant
Merle Lee Allred

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JOHN EDWARD HANSEN, #4590
STEVEN B. SMITH, #5797
SCALLEY & READING
Attorneys for Defendant
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,	:	OFFER OF JUDGMENT
Plaintiff,	:	
vs.	:	
ANN ANASTASION and SHAWN	:	Civil No. 910906462PI
ANASTASION,	:	Judge Timothy R. Hanson
Defendants.	:	

Pursuant to Rule 68(b) of the Utah Rules of Civil Procedure, Defendant Ann Anastasion, by and through her attorney, offers to allow judgment to be taken against it in the amount of Seventeen Thousand Five Hundred and No/100 Dollars (\$17,500.00) together with costs presently accrued.

Pursuant to Rule 68 of the Utah Rules of Civil Procedure, this offer will remain open and available to be accepted for ten (10) days. If not accepted in writing within that time period it

EXHIBIT "A"

will be deemed rejected and withdrawn and Defendant Ann Anastasion intends to introduce it in order to recover costs incurred.

DATED this 24th day of July, 1993.

SCALLEY & READING

Attorneys for Defendant

By: 
STEVEN B. SMITH

CERTIFICATE OF HAND DELIVERY

I hereby certify that on the 24th day of July, 1993, a true and correct copy of the foregoing Offer of Judgment was hand delivered to the following:

Kelly R. Sheffield, Esq.
SHAPIRO & ROBINSON
4516 South 700 East, Suite 360
Salt Lake City, Utah 84107

Blake S. Atkin, Esq.
350 South 400 East, #114
Salt Lake City, Utah 84111

Sean Anastasion
Defendant Pro Se
364 East 600 South
Salt Lake City Utah 84111



Blake S. Atkin #4466
David J. Bonner #5040
350 So. 400 East #114
Salt Lake City, Utah 84111
Telephone (801) 533-0300

Attorneys for Defendants
Pacifcorp and Aetna

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,)	
)	
Plaintiff,	)	ACCEPTANCE OF OFFER
	)	OF JUDGMENT
v.)	
)	
ANN ANASTASION, SHAWN	)	Civil No. 910906462PI
ANASTASION, PACIFICORP)	
ELECTRIC OPERATION, and	)	Judge Timothy R. Hanson
AETNA HEALTH PLANS,)	
)	
Defendants.)	

Pursuant to Rule 68(b) of the Utah Rules of Civil Procedure and Defendant Ann Anastasion's Offer of Judgment dated July 27, 1993, Cross-Claimants Pacifcorp Electric Operations and Aetna Health Plans accept Defendant Ann Anastasion's offer to allow judgment to be taken against her in the amount of Seventeen Thousand Five Hundred and no/100 Dollars (\$17,500.00), together with costs presently accrued.

DATED this 29th day of July, 1993.

BLAKE S. ATKIN, P.C.



DAVID J. BONNER
Attorney for Pacifcorp Electric
Operations & Aetna Health Plans

EXHIBIT "B"

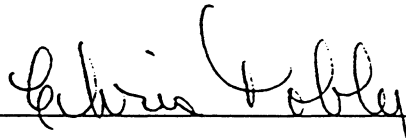
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing
ACCEPTANCE OF OFFER OF JUDGMENT was mailed, postage prepaid, this
29th day of July, 1993, to the following:

Steven B. Smith
SCALLEY & READING
261 E. 300 South, Suite 200
Salt Lake City, Utah 84111
Attorney for Defendant-Crossdefendant
Ann Anastasion

Shawn Anastasion
364 East 600 South
Salt Lake City, Utah 84102
Defendant-Crossdefendant Pro Se

Kelly R. Sheffield
4516 South 700 East Suite 360
Salt Lake City, Utah 84107
Attorney for Plaintiff-Counterdefendant
Merle Lee Allred



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Blake S. Atkin #4466
David J. Bonner #5040
350 So. 400 East #114
Salt Lake City, Utah 84111
Telephone (801) 533-0300

FILED
DISTRICT COURT

AUG 6 4 59 PM '93

THIRD DISTRICT
BY _____ CLERK

Attorneys for Defendants
Pacificorp and Aetna

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,

Plaintiff,

v.

ANN ANASTASION, SHAWN
ANASTASION, PACIFICORP
ELECTRIC OPERATION, and
AETNA HEALTH PLANS,

Defendants.


NOTICE OF ENTRY OF
JUDGMENT AGAINST
ANN ANASTASION

Civil No. 910906462PI

Judge Timothy R. Hanson

Pursuant to Rule 58A(d) of the Utah Rules of Civil Procedure, notice is hereby given of the entry of Judgment dated August 4, 1993, copy attached, for defendant-counterclaimants Pacificorp Electric Operation and Aetna Health Plans and against defendant Ann Anastasion in the amount of \$17,500.00, plus interest at the legal rate, costs of court and reasonable attorney's fees.

DATED this 6th day of August, 1993.



DAVID J. BONNER
Attorney for Pacificorp & Aetna

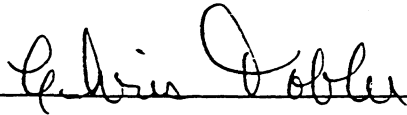
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF ENTRY OF JUDGMENT AGAINST ANN ANASTASION was mailed, postage prepaid, this 6th day of August, 1993, to the following:

Steven B. Smith
SCALLEY & READING
261 E. 300 South, Suite 200
Salt Lake City, Utah 84111
Attorney for Defendant-Crossdefendant
Ann Anastasion

Shawn Anastasion
364 East 600 South
Salt Lake City, Utah 84102
Defendant-Crossdefendant Pro Se

Kelly R. Sheffield
1364 Emigration Street
Salt Lake City, Utah 84108
Attorney for Plaintiff-Counterdefendant
Merle Lee Allred



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Blake S. Atkin #4466
David J. Bonner #5040
350 So. 400 East #114
Salt Lake City, Utah 84111
Telephone (801) 533-0300

Attorneys for Defendants
Pacificorp and Aetna

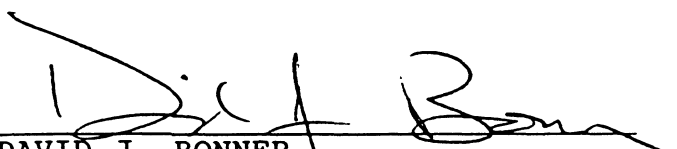
DISTRICT COURT
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DISTRICT
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,)	
)	
Plaintiff,	)	CORRECTED
	)	NOTICE OF ENTRY OF
v.	)	JUDGMENT AGAINST
	)	ANN ANASTASION
)	
ANN ANASTASION, SHAWN	)	Civil No. 910906462PI
ANASTASION, PACIFICORP)	
ELECTRIC OPERATION, and	)	Judge Timothy R. Hanson
AETNA HEALTH PLANS,)	
)	
Defendants.)	

Pursuant to Rule 58A(d) of the Utah Rules of Civil Procedure, notice is hereby given of the entry of Judgment dated August 4, 1993, copy attached, for defendant-counterclaimants Pacificorp Electric Operation and Aetna Health Plans and against defendant Ann Anastasion in the amount of \$17,500.00, together with costs presently accrued.

DATED this 9th day of August, 1993.



DAVID J. BONNER
Attorney for Pacificorp & Aetna

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing CORRECTED NOTICE OF ENTRY OF JUDGMENT AGAINST ANN ANASTASION was mailed, postage prepaid, this 9th day of August, 1993, to the following:

Steven B. Smith
SCALLEY & READING
261 E. 300 South, Suite 200
Salt Lake City, Utah 84111
Attorney for Defendant-Crossdefendant
Ann Anastasion

Shawn Anastasion
364 East 600 South
Salt Lake City, Utah 84102
Defendant-Crossdefendant Pro Se

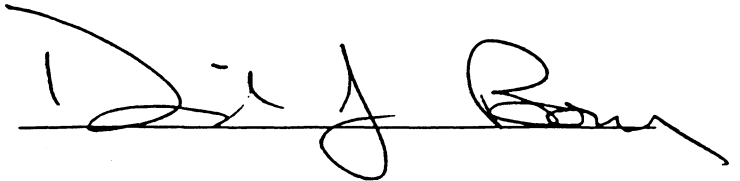
Kelly R. Sheffield
1364 Emigration Street
Salt Lake City, Utah 84108
Attorney for Plaintiff-Counterdefendant
Merle Lee Allred



CERTIFICATE OF HAND DELIVERY

This is to certify that a copy of the foregoing CORRECTED NOTICE OF ENTRY OF JUDGMENT AGAINST ANN ANASTASION was hand delivered on this 9th day of August, 1993, to:

Steven B. Smith
SCALLEY & READING
261 E. 300 South, Suite 200
Salt Lake City, Utah 84111
Attorney for Defendant-Crossdefendant
Ann Anastasion



Anastasion in the amount of Seventeen Thousand Five Hundred and no/100 Dollars (\$17,500.00), together with costs presently accrued.

DATED this 4 day of August, 1993.

BY THE COURT:

181
Hon. Timothy R. Hanson
Third District Judge

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing JUDGMENT was mailed, postage prepaid, this _____ day of _____, 1993, to the following:

Steven B. Smith
SCALLEY & READING
261 E. 300 South, Suite 200
Salt Lake City, Utah 84111
Attorney for Defendant-Crossdefendant
Ann Anastasion

Shawn Anastasion
364 East 600 South
Salt Lake City, Utah 84102
Defendant-Crossdefendant Pro Se

Kelly R. Sheffield
4516 South 700 East Suite 360
Salt Lake City, Utah 84107
Attorney for Plaintiff-Counterdefendant
Merle Lee Allred

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FILE NO. 910906462 SEP 30 1993

E: (✓ PARTIES PRESENT) COUNSEL: (✓ COUNSEL PRESENT)
LE LEE ALLRED, : Kelly R. Sheffield
Plaintiff, : Attorney for Plaintiff
: Steven B. Smith
S. : Attorney for Defendant Ann Anastasion
ANASTASION, et al., : Shawn Anastasion
Defendants, : Pro se
: Blake S. Atkin
: Attorney for Defendants Pacificorp & Aetna

CLERK

REPORTER

BAILIFF

HON. TIMOTHY R. HANSON

JUDGE

DATE: 9/28/93

Before the Court are proposed Findings of Fact, Conclusions of Law, and Order relating to certain Motions that were heard before the Court on the 27th day of August, 1993. The Court also has Objections to the form proposed by counsel for the plaintiff, and an alternative set of Findings of Fact, Conclusions of Law, and Order prepared by counsel for Aetna Health Plans and Pacificorp Electric Operation.

The Court has reviewed the Objections, has reviewed the alternative sets of Findings of Fact, Conclusions of Law, and Order, and is satisfied that the document proposed by the defendant Ann Anastasion most clearly conforms with the Court's Orders in this matter. The Court has signed the proposed Findings of Fact, Conclusions of Law, and Order submitted by counsel for Ann Anastasion, and has filed unsigned the proposed Findings of Fact, Conclusions of Law, and Order as submitted by counsel for Pacificorp and Aetna.

--Continued--

FILE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

BLE LEE ALLRED,

:

Plaintiff,

:

vs.

:

N ANASTASION, et al.,

:

Defendants.

:

CLERK

HON. TIMOTHY R. HANSON

JUDGE

REPORTER

DATE:

BAILIFF

No formal Order will be necessary relating to this Court's decision on the Objections to the proposed Findings, inasmuch as this Minute Entry will stand as the Court's Order thereon.

151
TIMOTHY R. HANSON
DISTRICT COURT JUDGE

Copies to:

Kelly R. Sheffield, Esq.

Steven B. Smith, Esq.

Shawn Anastasion, pro se

Blake S. Atkin, Esq.

SEP 30 1993

JOHN E. HANSEN, #4590
STEVEN B. SMITH, #5797
SCALLEY & READING
Attorneys for Defendant
Ann Anastasion
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

FILED DISTRICT COURT
Third Judicial District

SEP 28 1993

By 151 SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

MERLE LEE ALLRED,	:	FINDINGS OF FACT, CONCLUSIONS
Plaintiff,	:	OF LAW AND ORDER
vs.	:	
ANN ANASTASION and SHAWN	:	Civil No. 910906462PI
ANASTASION,	:	
Defendants.	:	Judge Timothy R. Hanson

Defendant Ann Anastasion's Motions: for Relief from the Judgment rendered against her pursuant to her Offer of Judgment to Merle Allred; for costs, attorney fees and sanctions; and to dismiss PacifiCorp and Aetna from this lawsuit came regularly before the Court on the 27th day of August, 1993, at the hour of 4:00 p.m. pursuant to notice. Steven B. Smith of Scalley & Reading appeared on behalf of Ann Anastasion and Blake Atkin appeared on behalf of PacifiCorp and Aetna. Memoranda having been submitted by the respective parties and the matter having been argued and

submitted to the Court and the Court having rendered its decision makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Ann Anastasion made an Offer of Judgment to Merle Lee Allred.

2. That Offer of Judgment was never made nor extended to PacifiCorp and or Aetna for their acceptance.

3. That Offer of Judgment was intended to end all litigation associated with Merle Allred's claim for personal injuries against Ann Anastasion.

4. PacifiCorp and Aetna attempted to accept that Offer of Judgment and obtained a judgment against Ann Anastasion pursuant to that purported acceptance.

5. PacifiCorp and Aetna's only interest in this lawsuit is a subrogation interest in Merle Allred's claim against Ann Anastasion for reimbursement of monies it paid out for and on behalf of Merle Allred.

6. The amount set forth in Ann Anastasion's Offer of Judgment to Merle Allred (\$17,500.00) was over \$2,500.00 greater than the amount PacifiCorp and Aetna had paid for Merle Allred's medical bills.

7. Counsel for Ann Anastasion disputed PacifiCorp's and Aetna's right and capacity to accept the Offer of Judgment as soon as they learned PacifiCorp and Aetna had attempted to accept it.

8. PacifiCorp's and Aetna's claimed subjective belief that the Offer of Judgment was made to them was not reasonable.

9. PacifiCorp's and Aetna's failure to accept Ann Anastasion's Offer of Judgment would not have obliged PacifiCorp and Aetna to pay Ann Anastasion's costs in the event a verdict less favorable than the Offer of Judgment was obtained against Ann Anastasion.

10. Plaintiff's Third Amended Complaint naming PacifiCorp and Aetna as Defendants in this lawsuit was properly filed with this Court.

CONCLUSIONS OF LAW

1. No power of acceptance of Ann Anastasion's Offer of Judgment was ever created in PacifiCorp and or Aetna.

2. At no time did either PacifiCorp or Aetna have the right, power or authority to accept Ann Anastasion's Offer of Judgment.

3. The judgment obtained by PacifiCorp and Aetna is vacated and has no legal force or affect whatsoever.

4. Ann Anastasion's Offer of Judgment will have no legal force or affect whatsoever.

5. Each party is to bear its own costs and attorney fees.

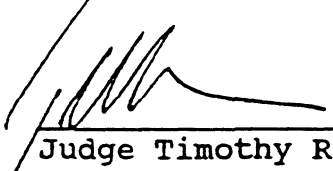
6. Sanctions are not appropriate under the facts and circumstances upon which this Order is based.

ORDER

The judgment rendered for PacifiCorp and Aetna against Ann Anastasion on August 4, 1993, is hereby vacated and Ann Anastasion is relieved from any and all legal force and or affect that judgment may have had. Ann Anastasion's Motion for Costs, Attorney's Fee and Sanctions is hereby denied and each party is to bear its own costs.

DATED this 28 day of September, 1993.

THIRD DISTRICT COURT



Judge Timothy R. Hanson

MAILING CERTIFICATE

I hereby certify that on the 28 day of September, 1993, a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Order was mailed, postage prepaid, to the following:

Steven B. Smith, Esq.
SCALLEY & READING
261 East 300 South, Suite 200
Salt Lake City, Utah 84111

Kelly R. Sheffield, Esq.
1364 Emigration Street
Salt Lake City, Utah 84108

Blake S. Atkin, Esq.
350 South 400 East, #114
Salt Lake City, Utah 84111

Sean Anastasion
Defendant Pro Se
364 East 600 South
Salt Lake City Utah 84111

151

RECEIVED
FILED DISTRICT COURT
Third Judicial District
MAR - 7 1994

By 19 SALT LAKE COUNTY
Deputy Clerk

JOHN EDWARD HANSEN, #4590
STEVEN B. SMITH, #5797
SCALLEY & READING
Attorneys for Defendant
Ann Anastasion
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,	:	JUDGMENT ON JURY VERDICT
Plaintiff,	:	
vs.	:	Civil No. 910906461PI
ANN ANASTASION and SHAWN	:	Judge Timothy R. Hanson
ANASTASION,	:	
Defendants.	:	

The above-entitled matter came on regularly for trial the 7th, 8th and 9th of February, 1994, with the Honorable Timothy R. Hanson presiding, the case being tried to a jury. Plaintiff Merle Lee Allred was represented by Kelly Sheffield. PacifiCorp Electric Operations and Aetna Health Plans were represented by David J. Bonner. Defendant Ann Anastasion was represented by Steven B. Smith and John Edward Hansen of Scalley & Reading. Defendant Sean Anastasion was personally present but due to a prior default judgment being taken against him did not participate as a party during trial.

B:\ANASTAS.JJV

After conclusion of the evidence, the case was submitted to the jury on special verdict interrogatories and the jury answered the following pertinent interrogatories:

1 Considering all of the evidence in this case, do you find from a preponderance of the evidence that the Defendant, Ann Anastasion was negligent?

YES _____ NO X

2. Considering all of the negligence in this case, do you find from a preponderance of the evidence that the Defendant, Sean Anastasion, was negligent?

YES _____ NO X

Based on the jury's response to the above-referenced interrogatories, it is

HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Defendant Ann Anastasion and against Plaintiff Merle Lee Allred of no cause of action. It is further ordered, adjudged and decreed that based upon the jury's verdict referred to above, Plaintiff Merle Allred's Complaint against Defendant Ann Anastasion is hereby dismissed with prejudice. Likewise, all cross-claims and counter-claims of PacifiCorp Electric Operations and Aetna Health Plans against Plaintiff Merle Lee Allred and Defendant Ann Anastasion are also hereby dismissed with prejudice. The default judgment taken by PacifiCorp Electric Operations and

Aetna Health Plans against Defendant Sean Anastasion is not affected by the jury's verdict or this order. Defendant Ann Anastasion is awarded costs as set forth in the Memorandum of Costs previously submitted.

DATED this 7 day of March, 1994.

BY THE COURT

TS
Honorable Timothy R. Hanson

MAILING CERTIFICATE

I hereby certify that on the 7 day of March, 1994, a true and correct copy of the foregoing Judgment On Jury Verdict was mailed, postage prepaid, to the following:

Steven B. Smith, Esq.
SCALLEY & READING
261 East 300 South, Suite 200
Salt Lake City, Utah 84111

Kelly R. Sheffield, Esq.
1364 Emigration Street
Salt Lake City, Utah 84108

Blake S. Atkin, Esq.
350 South 400 East, #114
Salt Lake City, Utah 84111

Sean Anastasion
364 East 600 South
Salt Lake City, Utah 84111

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RECEIVED
MAR 3 1994

JOHN EDWARD HANSEN, #4590
STEVEN B. SMITH, #5797
SCALLEY & READING
Attorneys for Defendant
Ann Anastasion
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

MERLE LEE ALLRED,	:	MEMORANDUM OF COSTS AND
	:	DISBURSEMENTS
Plaintiff,	:	
vs.	:	Civil No. 910906461PI
ANN ANASTASION and SHAWN	:	Judge Timothy R. Hanson
ANASTASION,	:	
Defendants.	:	

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

STEVEN B. SMITH, being first duly sworn, upon oath,
deposes and states that:

1. He is counsel of record for Defendant, Ann
Anastasion, in the above matter and submits that the following
costs were necessarily expended in the above matter and taxable,
including:

Jury Fee	\$ 50.00
----------	----------

Witness Fees:

Holy Cross Hospital	\$ 17.00
Dr. Robert P. Hansen	167.00

Sean Anastasion	17.00
Dr. Ted Conger	51.00
Dr. David E. Curtis	17.00
Bryan Drennan	17.00
Dr. G. Lynn Rasmussen	<u>\$517.00</u>

\$ 803.00

Depositions:

Court Reporter fee for
the following witnesses:

Ann Anastasion	
Sean Anastasion	
Merle Allred	\$288.10
Merle Lee Allred	
Becky Sue Neville	337.10
Dr. Robert Hansen	270.25
Dr. Rasmussen	<u>267.35</u>

\$1,162.80

TOTAL

\$2,015.80

DATED this 2nd day of March, 1994.

SCALLEY & READING

Steven B. Smith

Steven B. Smith
Attorneys for Defendant
Ann Anastasion

Subscribed and sworn to before me this 2nd day of
March, 1994.

Shelli Murray

NOTARY PUBLIC



Notary Public
SHELLY MURRAY
261 East 300 South #200
Salt Lake City, Utah 84111
My Commission Expires
October 9, 1995
State of Utah

MAILING CERTIFICATE

I hereby certify that on the 2nd day of March, 1994, a true and correct copy of the foregoing Memorandum of Costs and Disbursements and Judgment On Jury Verdict was mailed, postage prepaid, to the following:

Kelly R. Sheffield, Esq.
1364 Emigration Street
Salt Lake City, Utah 84108

Blake S. Atkin, Esq.
350 South 400 East, #114
Salt Lake City, Utah 84111

Sean Anastasion
364 East 600 South
Salt Lake City, Utah 84111

