

2006

Celeste Moss, Bradley A. Rone v. Pete Suazo Utah Athletic Commission, Utah Department of Commerce, State of Utah, Top Rank, Inc., Sean Gibbons, Pete Susens, Cornelius Boza-Edwards, FKF Productions, Eddie "Flash" Newman Randall Delcore, M.D. : Reply Brief

Utah Court of Appeals

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Robert B. Sykes; Ryan B. Evershed; Robert Sykes and Associates; attorneys for appellant.

Debra J. Moore, Barry Lawrence; Assistant Attorney General; attorneys for appellee.

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IN THE UTAH SUPREME COURT

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CELESTE MOSS, an Heir of	)	
BRADLEY A. RONE,	)	
	)	<b>APPEAL</b>
	)	
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	
PETE SUAZO UTAH ATHLETIC	)	Supreme Court
COMMISSION, UTAH	)	No. 20060438
DEPARTMENT OF COMMERCE,	)	
STATE OF UTAH, TOP RANK, INC.,	)	
a Nevada Corporation, SEAN	)	
GIBBONS, PETE SUSENS,	)	
CORNELIUS BOZA-EDWARDS, FKF	)	Third Dist. Ct.
PRODUCTIONS, EDDIE "FLASH"	)	Civil No. 050911890
NEWMAN, RANDALL DELCORE,	)	
M.D., and JOHN AND JANE DOES 1-	)	
10,	)	Judge Sandra Peuler
	)	
Defendants/Appellee.	)	
	)	
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REPLY BRIEF OF APPELLANT'S

Appeal to the Utah Supreme Court from the Entry of Final Judgment of Third Judicial District Court of Salt Lake County, Judge Sandra Peuler.

DEBRA J. MOORE (#4905)  
BARRY LAWRENCE (#5304)  
ASSISTANT ATTORNEYS GENERAL  
160 East 300 South, Sixth Floor  
P. O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone No. (801) 366-0100  
Attorneys for Appellee

ROBERT B. SYKES (#3180)  
RYAN B. EVERSLED (#10842)  
ROBERT B. SYKES & ASSOCIATES, P.C.  
311 South State Street, #240  
Salt Lake City, Utah 84111  
Telephone No. (801) 533-0222  
Attorneys for Appellant

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Telephone No. (801) 366-0100  
Attorneys for Appellee

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ROBERT B. SYKES & ASSOCIATES, P.C.  
311 South State Street, #240  
Salt Lake City, Utah 84111  
Telephone No. (801) 533-0222  
Attorneys for Appellant

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## INTRODUCTION

Justice demands that the Pete Suazo Utah Athletic Commission be held accountable for its deliberate and negligent actions that caused the death of boxer Bradley Rone. In seeking dismissal of this lawsuit, the state defendants argue for an outcome which will create a dangerous precedent, one which will give carte blanche to the Commission to ignore its own rules and allow boxers into the ring even where their health and life are in jeopardy.

## ARGUMENT

### POINT I

#### ~ Regulation of Boxing Not a Governmental Function ~

**THE REGULATION AND ADMINISTRATION OF BOXING IS NOT A CORE GOVERNMENTAL FUNCTION AND THEREFORE IS NOT SUBJECT TO THE UTAH GOVERNMENTAL IMMUNITY ACT.**

The regulation and administration of the sport of boxing is a function which could readily be performed by a non-governmental entity. Under Standiford v. Salt Lake City Corp., 605 P.2d 1230, 1236-37 (Utah 1980), to claim immunity for an activity purported to be a “governmental function,” the state must show that “the activity under consideration is of such a unique nature that it can only be performed by a governmental agency or that it is essential to the core of governmental activity.” The state has failed to make such a showing.

The state defendants argue, in essence, that because historically there has been corruption in boxing, that means that there must be government oversight of the sport. The weakness of defendants' argument may explain why they have tucked it away at the end of their brief despite the fact that it is plaintiff's lead argument. They cite to four cases, three from New York and one from Georgia, dating back to 1914, 1946, 1959 and 1969, and to federal legislation seeking to create uniform standards in boxing.

Defendants' argument fails on a number of levels. George Foreman called boxing "the sport to which all other sports aspire," but it is still a sport. As with other sports, there is no necessity that government administer its day-to-day operations. Major League Baseball, the National Football League, the National Basketball Association, the National Hockey Association – none of these leagues are run by governmental entities. Even boxing is not entirely government-run. The government does not regulate amateur boxing; a non-profit organization called USA Boxing administers and develops the sport of amateur boxing in this country (including in Utah). And within professional boxing, the primary regulatory bodies for championship fights (as distinguished from non-title fights) are the private, for-profit entities that sanction those fights, organizations like the World Boxing Council ("WBC"), World Boxing Association ("WBA") and International Boxing Federation ("IBF"). The WBC, by way of example, has established the set of rules which governs its world championship fights – it



decides which fighter is eligible to compete in a championship fight, establishes regulations to protect the safety of the boxers, and sets the rules for the competition itself.

In addition, oversight by the government is of course something very different than the day-to-day regulation and administration of a sport or any other undertaking. The government sets rules which all of society must follow. Thomas v. Clearfield City, 642 P.2d 737, 739 (Utah 1982) provides a good example; the government may impose health and safety standards which impact on the collection and disposal of sewage in our communities, but “the collection and disposal of sewage is not ‘of such a unique nature that it can only be performed by a governmental agency,’ in the sense that these are activities that ‘government alone must do.’” Very simply, private companies can, and do, collect and dispose of sewage. Similarly, the government may impose anti-monopoly regulations which have an impact on the manner in which sports leagues are set up, but that government oversight is something very different from a governmental entity actually regulating and administering a sport on a day-to-day basis.

Finally, the fact that historically there has been corruption in boxing does not necessitate that a governmental agency administer the sport. Corruption has unfortunately invaded many sports and many areas of American life. The government did not take over baseball because of the Black Sox Scandal of 1919.

Major League Baseball cleaned up its own house; it has established its own rules to deal with betting in baseball, and to deal with the more recent problem of performance-enhancing drugs. The NCAA deals with its internal scandals in college sports without the help of government. While there is no denying that there has been corruption in boxing during its long history – indeed, corruption has existed despite the fact that boxing has, to a large degree, been administered by government agencies – that fact has no bearing on whether the sport needs to be administered by the government.

Although the State of Utah, through its Department of Commerce and the Pete Suazo Utah Athletic Commission, has assumed the responsibility for regulating and administering the sport of professional boxing in Utah, that fact does not change the nature of the activity. The activity is the regulation and administration of a sport, which is neither a traditional nor an essential government function.

## POINT II

### ~ Licensing Exception Does Not Apply ~

**THE COURT SHOULD RULE, AS A MATTER OF FIRST IMPRESSION, THAT THE LICENSING EXCEPTION TO THE GOVERNMENTAL IMMUNITY ACT DOES NOT APPLY TO BOXING LICENSES.**

There is little precedent in Utah law with respect to the definition of “license” in the context of Utah Code Ann. § 63-30-10(3), and no guidance at

all with respect to the use of that term in the context of boxing or other sports. Because the Governmental Immunity Act has no bearing on the administration and regulation of boxing, this Court need not even reach the question of whether the grant of immunity for a licensing decision applies in the context of a boxing license. However, should this Court choose to address this novel question, plaintiff urges the Court to find, as a matter of first impression, that there is a distinction between licenses issued for administrative purposes and those issued for activities which affect the life and safety of the participants.

In the instant matter, the issuance of a license to box was not – or at least should not have been – a simple administrative act. A license to box, according to the Commission’s own rules, should be issued only upon a medical determination that an individual is fit to compete in a bout. A ruling which allows the Commission to ignore its own requirements would sanction the type of deliberate disregard for important medical rules and other rules which occurred when Bradley Rone was allowed to box on July 18, 2003. It would permit the Commission to license a blind man or a man with one arm or a man who would be susceptible to grave injury for a thousand other reasons without being held to account. Such a result would set a terrible precedent, as it would say that the State of Utah does not need to follow its own rules, that the State of Utah can deliberately or negligently disregard human life and human safety without any accountability.

### POINT III

#### ~ Other Grounds For Liability ~

**THE STATE DEFENDANTS ENGAGED IN SEVERAL NEGLIGENT AND DELIBERATE ACTS, IN ADDITION TO THE ISSUANCE OF A BOXING LICENSE, WHICH CAUSED THE DEATH OF BRADLEY RONE.**

The Commission's issuance of a license to Bradley Rone took place on a date prior to July 18, 2003, the date on which Rone fought and died in a boxing ring. While it is certainly true that licensing Rone was a prerequisite to his getting into a Utah ring, it was by no means the only prerequisite. The Pete Suazo Utah Athletic Commission Act Rules set forth the many other requirements that must be satisfied before an individual is allowed to box. The state defendants negligently and deliberately disregarded several of these rules, and such negligent and intentional actions provide grounds for liability which are separate and apart from the Commission's issuance of a license.

Defendants do not deny that the Commission failed to follow its own rules in several important respects. They simply attempt to lump all of those failures together under the rubric of a licensing decision, and in that way to escape liability. Defendants' reasoning is flawed, as the Commission's decision to issue a boxing license to an individual is only one determination that the Commission must make in allowing a bout to go forward.

Simple illustrations abound. A boxer has been issued a boxing license. He is scheduled to fight in a 160-pound bout. His opponent weighs in at 160. The boxer steps on the scale and weighs in at 168. The Commission can then make the decision that the fight will not go on because the discrepancy in weight between the two fighters would make the bout unsafe and unfair. That decision has no connection to whether the boxer was properly licensed.

Another easy illustration. A boxer with a 7 win and 15 loss record is licensed by Utah to box. The promoter proposes a bout between the 7-15 boxer and an undefeated boxer who has a record of 24 wins, all coming by way of knockout, and all against solid opposition. The Commission decides that because of the discrepancy in the two fighters' records and in their skill levels, the bout would not be safe. The Commission does not allow the bout to go forward even though the 7-15 boxer has been properly licensed.

It is clear that not all decisions of the Commission fall under the rubric of licensing decisions. Plaintiff has set forth many allegations of defendants' negligent and deliberate actions which go far beyond the simple decision to issue a license. Those negligent and deliberate acts caused a man's death, and justice demands that defendants be held to account for those acts.

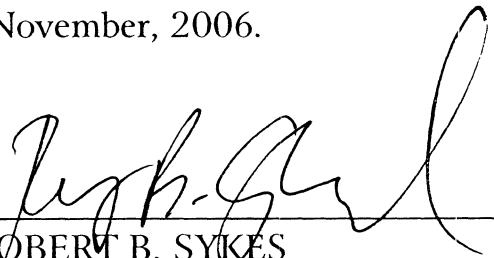
### CONCLUSION

The heirs of Bradley Rone are asking this Court for the kind of fair treatment that their brother did not receive from the Commission. They are

seeking justice, and asking the Court not to credit the state defendants' unfounded reliance on the Governmental Immunity Act. The GIA does not apply here as the regulation and administration of the sport of boxing is not a "governmental function" as that term is defined in statute and in case law. Even if the Court decides that the GIA does apply in the context of regulating and administering the sport of boxing, Utah Code Ann. §63-30-10(3) should have no applicability to the issuance of boxing licenses. In any event, in the case of Bradley Rone, there are multiple grounds of liability which go far beyond the mere issuance of a license by the Commission.

Plaintiff respectfully requests that this Court reverse the ruling of the lower court and allow the heirs of Bradley Rone to seek redress in our courts for his wrongful death.

DATED this 13th day of November, 2006.

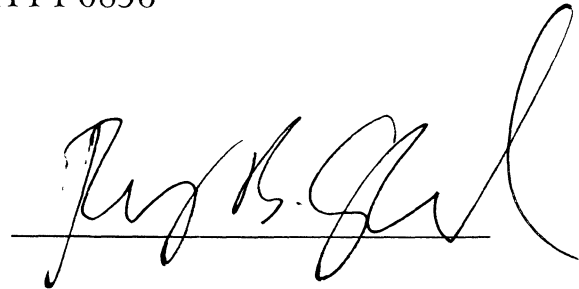
  
\_\_\_\_\_  
ROBERT B. SYKES  
RYAN B. EVERSLED  
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of **Appellants'**  
**Brief** were served upon all parties of record, at the address listed below, by  
hand delivery, on this 13th day of November, 2006:

Attorneys for State of Utah:

Debra J. Moore  
Barry Lawrence  
ASSISTANT ATTORNEYS GENERAL  
160 East 300 South, Sixth Floor  
P. O. Box 140856  
Salt Lake City, Utah 84114-0856

A handwritten signature in black ink, appearing to read "Barry Lawrence", is written over a horizontal line. The signature is cursive and stylized.