

2006

# Daniel Suazo v. Salt Lake City Corp. : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Randall Lee Marshall; Randall Lee Marshall, P.C.; Attorney for Plaintiff-Appellee.

J. Wesley Robinson; Senior City Attorney; Attorney for Defendant-Appellant.

---

## Recommended Citation

Brief of Appellee, *Suazo v. Salt Lake City*, No. 20060797 (Utah Court of Appeals, 2006).

[https://digitalcommons.law.byu.edu/byu\\_ca2/6781](https://digitalcommons.law.byu.edu/byu_ca2/6781)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

Case No. 20060797

IN THE UTAH COURT OF APPEALS

---

DANIEL SUAZO,	)	
	)	
Plaintiff-Appellee,	)	BRIEF OF APPELLEE
	)	DANIEL SUAZO
	)	
vs.	)	
	)	
SALT LAKE CITY CORP.,	)	
	)	
Defendant.	)	
	)	

---

ON THE INTERLOCUTORY APPEAL FROM AN ORDER OF  
THE THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, STATE OF UTAH,  
CASE NO. 050922293

HONORABLE J. DENNIS FREDERICK

---

J. WESLEY ROBINSON  
Senior City Attorney  
451 South State, Suite 505  
Salt Lake City, UT 84111  
Telephone: (801) 535-7788

RANDALL LEE MARSHALL #5508  
RANDALL LEE MARSHALL, P.C.  
1309 – 16<sup>th</sup> Street, Suite C  
Ogden, UT 84404  
Telephone: (801) 394-2673

Attorney for Defendant-Appellant  
Salt Lake City Corporation

Attorney for Plaintiff-Appellee  
Daniel Suazo

FILED  
UTAH APPELLATE COURTS

JAN 31 2007

Case No. 20060797

IN THE UTAH COURT OF APPEALS

---

DANIEL SUAZO,	)	
	)	
Plaintiff-Appellee,	)	BRIEF OF APPELLEE
	)	DANIEL SUAZO
	)	
vs.	)	
	)	
SALT LAKE CITY CORP.,	)	
	)	
Defendant.	)	
	)	

---

ON THE INTERLOCUTORY APPEAL FROM AN ORDER OF  
THE THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, STATE OF UTAH,  
CASE NO. 050922293

HONORABLE J. DENNIS FREDERICK

---

J. WESLEY ROBINSON  
Senior City Attorney  
451 South State, Suite 505  
Salt Lake City, UT 84111  
Telephone: (801) 535-7788

RANDALL LEE MARSHALL #5508  
RANDALL LEE MARSHALL, P.C.  
1309 – 16<sup>th</sup> Street, Suite C  
Ogden, UT 84404  
Telephone: (801) 394-2673

Attorney for Defendant-Appellant  
Salt Lake City Corporation

Attorney for Plaintiff-Appellee  
Daniel Suazo

## **LIST OF ALL PARTIES**

Plaintiff-Appellee, Daniel Suazo.

Defendant-Appellant, Salt Lake City Corporation.

Defendant, Salt Lake County.

Defendant, State of Utah.

**TABLE OF CONTENTS**

	Page
<b><u>SUMMARY OF ARGUMENT</u></b> .....	1
<b><u>ARGUMENT</u></b> .....	3
<b><u>CONCLUSION</u></b> .....	8
<b><u>APPENDIX (Affidavit of Kathy Berg with attachments)</u></b> .....	10

**TABLE OF AUTHORITIES**

**CASES**

Page

Bischel v. Merritt, 907 P.2d 275 (Utah App. 1995) . . . . . 5, 7, 8

**STATUTES**

Utah Code Ann. § 63-30d-401 . . . . . 3

Utah Code Ann. § 63-30d-401(3)(b)(ii) . . . . . 3

Utah Code Ann. § 63-30d-401(5)(e) . . . . . 3

Utah Code Ann. § 63-30d-401(7) . . . . . 4, 8

## SUMMARY OF ARGUMENT

The Utah Governmental **Immunity Act**, amended in 2004, provides for a claimant to deliver a notice of claim to either, in this case, the City Clerk or an agent designated in the Division of Corporations and Commercial Code Governmental Immunity Database (“the Database”). Appellee (“Suazo”) relied upon the information in the Database.

Appellant (“SLC”) admitted that it made an error in listing Rowley as its agent on the Database. But for SLC’s error, the notice would have been delivered **to the** appropriate agent.

While this Court requires strict compliance with the notice requirements of the Immunity Act, there have been exceptions due to ambiguities. In this case, there was an ambiguity as the agent listed in the Database was not the City Clerk and the information was changed just prior to Suazo’s counsel mailing the **notice of claim**.

When there is an ambiguity – in this case, an ambiguity in the application of the statute – the Court should apply the statute reasonably. It is reasonable to allow an overlap in time when there is a change in the agent listed in the registry. Just as a change of address would allow for

mail to be forwarded, so the previously designated agent should reasonably expect a notice of claim may be delivered for a period of time after the change on the Database. To apply the statute otherwise would provide governmental entities with the a “trap” to catch claimants unawares by changing the agent periodically.

In this case, Suazo reasonably complied with the notice requirement of the Immunity Act.

The trial court’s ruling should be affirmed.



## ARGUMENT

Plaintiff (“Suazo”) filed a proper notice of claim as required by the statute. Defendant, Salt Lake City Corporation (“SLC”) does not allege that the form or content of the notice is defective, only its delivery.

The applicable statute regarding filing a Notice of Claim to a governmental **entity** (U.C.A. §63-30d-401) is clear on its face. There is no ambiguity in the language of the statute. However, the statute does provide for alternate service. U.C.A. §63-30d-401(3)(b)(ii) directs that the notice be delivered to a specified officer, depending upon the nature of the entity being served. On the other hand, U.C.A. §63-30d-401(5)(e) allows for a governmental entity to designate some other agent to whom the notice may be delivered. In the case of an alternate agent being designated as in this case, delivery upon either the city clerk or the designated agent is adequate service of the notice. However, the *application* of the statute can be ambiguous.

In this case, on the Division of Corporations and Commercial Code Governmental Immunity Database (“the Database”), SLC designated Jeff Rowley, its Risk Manager, to accept service of a notice of claim. Suazo, through his counsel mailed the notice to Rowley. However, three days prior to Suazo’s counsel mailing the notice, SLC changed the designated agent on the Database to be the City Clerk. The question, then, is what is reasonable under the circumstances.

U.C.A. §63-30d-401(7) states that:

[a] governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity’s failure to file or update the statement required by Subsection (5).

The purpose of Subsection (7) is to apply to situations such as this. When there is confusion or error due to SLC’s filing error, it cannot use that confusion or error to invalidate service of the notice of claim.

SLC argues that Subsection(7) does not apply because SLC did not “fail” to file or amend its agent on the registry. However, SLC admits in

paragraph 12 of its Statement of Undisputed Facts that listing Jeff Rowley as the agent was a “mistake.” Paragraph 6 and the third page of Exhibit “A” of the Affidavit of Kathy Berg further support SLC’s admission that it was an error and could cause claimants confusion. *See Rec., pp. 68-76 and Appendix of this Brief.* Thus, SLC did err – or fail to update – when it listed Rowley on the Database. But for SLC’s error, **the notice would have been delivered** to the appropriate agent.

This case is similar to Bischel v. Merritt, 907 P.2d 275 (Utah App. 1995), wherein Bischel was uncertain where to send the notice (under a previous, ambiguous statute). She contacted the County Commission and was referred to the County Attorney. The County Attorney then verified to Bischel that she was the proper person to receive the notice. The County then argued that Bischel had not complied with the notice requirement of the Governmental Immunity Act. At some point, one must be allowed to reasonably rely upon the information given him or her by the governmental entity. Suazo’s counsel did reasonably rely upon the information found on the registry.

SLC then argues that Suazo was given the **proper** information if he

or his counsel would have looked at the Database the day the notice was mailed. At what point does the requirement to “double check” the Database become unreasonable? What if the governmental entity deliberately changes the designated agent every few days, hoping that it will catch claimants unawares? What if the claimant checks the Database in the morning, mails the letter at a satellite mail drop, the entity changes the agent later that day and the mail is then postmarked the next day? Absurd? Perhaps. But not impossible. The point is, there must be some kind of reasonableness applied when interpreting the statute. Suazo did not serve the notice on the wrong person or agent, *per se*. Rowley was the correct agent three days before the notice was mailed.

Reason would suggest that there be some kind of overlap of time when there is a change in the designated agent. For example, if SLC had kept the same agent but changed the agent’s address, likely, there would be a change of address filed with the U.S. Post Office which would forward mail addressed to the previously correct – but now incorrect– address to the new address. It would seem unreasonable for SLC to deny a notice of claim addressed to the previously correct – but now incorrect – address,

even though the mail was forwarded to the appropriate agent at the new address. Mr. Rowley had the responsibility – or, at least, the *apparent* responsibility – to receive notices of claim and to address them.

Presumably, he would address them himself as he was the Risk Manager.

It is certainly reasonable to expect – particularly because he was Risk Manager for SLC – that his duties to receive and address notices of claim did not cease precisely at 11:40:27 a.m. on November 17, 2004, when the agent information in the Database was changed. And, of course, one must consider that a notice that was mailed may take a few days to be delivered. Thus, there should be a reasonable amount of time to accommodate amendments to the Database.

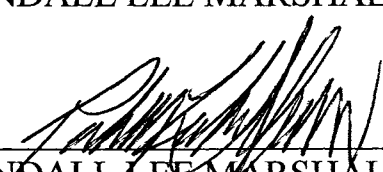
This Court has consistently required strict compliance with the requirements of the Governmental Immunity Act. However, there have been exceptions, particularly when an ambiguity arose. For example, in Bischel, *supra*, the ambiguity was one of the claimant relying upon the information provided by the entity itself. In this case, there is similar reliance. In Bischel, this Court interpreted the statute “in a manner consistent with the overall purpose of the Utah Governmental Immunity

## CONCLUSION

Suazo reasonably complied with the notice requirements of the Utah Governmental Immunity Act. While his error may not have been caused entirely by SLC's error; had SLC not erred, neither would Suazo have erred. Suazo should not be disadvantaged by SLC's error, particularly in light of U.C.A. §63-30d-401(7). The lower court's order should be affirmed.

Respectfully submitted this 29<sup>th</sup> day of January, 2007.

RANDALL LEE MARSHALL, P.C.



---

RANDALL LEE MARSHALL  
Attorney for Plaintiff-Appellee,  
Daniel Suazo

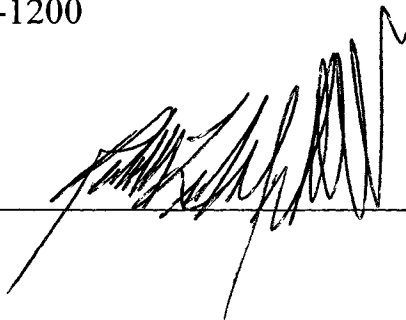
**CERTIFICATE OF DELIVERY**

I hereby certify that, on this 31<sup>st</sup> day of January, 2007, I caused to be mailed, first class, postage pre-paid, two true and correct copies of the foregoing BRIEF OF APPELLEE DANIEL SUAZO to the following:

J. WESLEY ROBINSON  
Senior City Attorney  
451 South State, Suite 505  
Salt Lake City, UT 84111

Barry Lawrence  
Assistant Attorney General  
P.O. Box 140856  
Salt Lake City, UT 84114-0856

Melanie F. Mitchell  
Valerie M. Wilde  
Deputy District Attorneys  
2001 South State Street, #S3700  
Salt Lake City, UT 84190-1200



A handwritten signature in black ink, appearing to be 'Barry Lawrence', is written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

**APPENDIX**

(Affidavit of Kathy Berg with attachments)



J. WESLEY ROBINSON, #6321  
Attorney for Defendant  
Salt Lake City Corporation  
Room 505, City and County Building  
451 South State Street  
Salt Lake City, Utah 84111  
Telephone: (801) 535-7788

---

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

---

DANIEL SUAZO,  
Plaintiff,

v.

STATE OF UTAH, SALT LAKE  
COUNTY, and SALT LAKE CITY,  
Defendants.

**AFFIDAVIT OF KATHY BERG**

Case No. 050922293

JUDGE J. DENNIS FREDERICK

---

STATE OF UTAH    )  
                          ; ss.  
County of Salt Lake )

Kathy Berg, being first duly sworn on oath, deposes and says:

1. I am the Director of the Corporations and Commercial Code Division of the Utah Department of Commerce.

2. Pursuant to Utah Code Ann. § 63-30d-401(5) and (6), the Division of Corporations and Commercial Code (“DCCC”) is responsible for maintaining the

Governmental Immunity Database, which provides a directory of designated agents for service of notice of claim for each governmental entity in the State of Utah.

3. I have reviewed the attached documents, which have been produced to Salt Lake City Corporation (“the City”) by the DCCC. *See Exhibit A, attached hereto.*

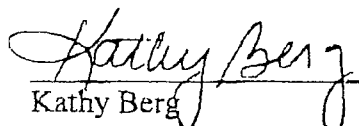
4. The first page of Exhibit A is a computer log of changes made to the database regarding the City’s agent designation. This page was produced by Jason Back, the Department of Commerce Web Services Coordinator, and given to Leah Lindstrom, the DCCC’s Deputy Director. *Exhibit A, pp. 1.*

5. The printout shows that on June 28, 2004, the agent authorized to receive notices of claim on behalf of the City was changed from the City’s Mayor, Rocky Anderson, to the City’s Risk Manager, Jeff Rowley.

6. The printout also shows that on November 17, 2004, at 11:40:27 a.m., the agent authorized to receive notices of claim on behalf of the City was updated from Mr. Rowley to Kendrick Cowley, the Salt Lake City Recorder. The third and fourth pages of Exhibit A document the City’s request, through its Risk Manager Timothy Rodriguez, that the DCCC make this correction as soon as possible. A hand-written note in the upper right corner of page three indicates this correction was “taken care of 11-17-04.”

7. Based on our records, I can verify that Kendrick Cowley, the Salt Lake City Recorder, was listed on the DCCC’s Governmental Immunity Database as the agent authorized to receive notices of claim on behalf of Salt Lake City Corporation as of 11:40:27 a.m. on November 17, 2004

DATED this 10<sup>th</sup> day of May, 2006.

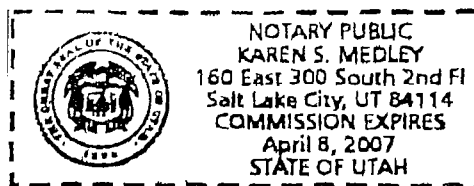
  
Kathy Berg

SUBSCRIBED AND SWORN to before me this 10 day of May, 2006.

  
NOTARY PUBLIC  
residing in Salt Lake County, Utah

My Commission Expires:

April 8, 2007



# EXHIBIT “A”

LogID	DateTime	User	Action	Detail	IP
1193	2004-06-28 14:43:01	saltlakecity	2	NULL	204.124.13.151
1194	2004-06-28 14:45:16	saltlakecity	3	Address: 451 S State Street #306 to 451 S State Street #505 Contact: Rocky Anderson to Jeff Rowley Title: to Risk Manager Phone: (801) 535-7704 to (801) 535-7788 Fax: to (801) 535-7640 Email: to jeff.rowley@slcgov.com	204.124.13.151
1195	2004-06-28 15:10:46	saltlakecity	3		204.124.13.151
1196	2004-06-28 15:10:48	saltlakecity	5	NULL	204.124.13.151
1752	2004-11-17 11:39:33	saltlakecity	2	NULL	168.179.156.128
1753	2004-11-17 11:40:27	saltlakecity	3	Address: 451 S State Street #505 to 451 S State Street RM 415 Contact: Jeff Rowley to Kendrick Cowley Title: Risk Manager to City Recorder Phone: (801) 535-7788 to (801) 535-7671 Fax: (801) 535-7640 to Email: jeff.rowley@slcgov.com to	168.179.156.128
1993	2005-06-08 15:00:54	saltlakecity	2	NULL	204.124.13.151
2000	2005-06-08 15:15:06	saltlakecity	3	Fax: to (801) 535-7681	204.124.13.151

#### LOG ACTIONS

- 0 Login Attempt
- 1 Remember Password
- 2 Logged In
- 3 Profile Updated
- 4 Password Updated
- 5 Logged Out
- 6 Locked Out

**From:** Jason Back  
**To:** Leah Lindstrom  
**Date:** 5/9/2006 3:26:07 PM  
**Subject:** GIA Mailing

Leah,

The information from the original mailing for SLC follows

Salt Lake City  
Rocky Anderson  
451 S State Street #306  
Salt Lake City UT 84111  
801-535-7704

Let me know if I can assist further

Jason Back  
Web Services Coordinator  
Utah Department of Commerce  
(801) 530-6255  
jback@utah.gov

Lindstrom - Salt Lake City's information for claims

taken care  
of 11-17-01

From "Rodriguez Timothy" <Timothy.Rodriguez@slc.gov>  
To: <lindstrom@utah.gov>  
Date: 11/17/2004 8:57:44 AM  
Subject: Salt Lake City's information for claims

Kendrick Cowley, City Recorder

(801) 535-7671

Timothy M. Rodriguez, CPCU

Risk Management Specialist

Salt Lake City Corp

451 South State Street, Room 505A

Salt Lake City, UT 84111

Ph (801) 535-6020, Fax (801) 535-7640

IMPORTANT: E-mails from the attorneys and staff of the City Attorney's Office are likely to contain confidential and privileged material for the sole use of the intended recipient. The use, distribution, transmittal or re-transmittal of any such communication is prohibited without the express approval of the City Attorney or a Deputy City Attorney in writing or by e-mail. If you are not the intended recipient, please contact the sender and delete all copies.

Salt Lake City - Jeff Rowley -  
Kendrick Cowley  
City Recorder  
801-535-7671  
Salt Lake City  
Recorder's office  
451 South State Street, Rm 415  
Salt Lake City, Utah 84111

**From:** Mary Ester Allers  
**To:** Lindstrom Leah  
**Date:** 11/17/2004 8 21 02 AM  
**Subject:** Fwd Salt Lake City

Leah,

I called Tim to see what he was talking about in his e-mail to this office.

He referenced the Government Entities Site having wrong info

(Kim this URL <http://goventities.commerce.utah.gov/>)

Will you please make corrections, if needed contact Tim for details that may be needed

T Y  
MEA

>>> Corp Ucc Corporation 11/17/04 08 11AM >>>  
Mary Ester,

I'm not sure what this e-mail is pertaining to, if it's in regards to the RA or something else I was hoping that you might know what this e-mail is about. If you could let me know when you can, I would greatly appreciate it

Thank you,  
Kim

>>> "Rodriguez, Timothy" <[Timothy.Rodriguez@slcgov.com](mailto:Timothy.Rodriguez@slcgov.com)> 11/17/2004 7 35 57 AM >>>  
The person to send a notice of claim to for Salt Lake City is not Jeff Rowley as you have listed on the web site, but is the Salt Lake City Recorder's Office Their address is 451 South State Street, Room 415, Salt Lake City, UT 84111 Please make this change as soon as possible, so there is no confusion for the claimants

Thank you for your prompt attention on this matter

Timothy M Rodriguez, CPCU  
Risk Management Specialist  
Salt Lake City Corp  
451 South State Street, Room 505A  
Salt Lake City, UT 84111  
Ph (801) 535 6020 Fax (801) 535-7640