

1986

# Ronald L. Ingram v. Salt Lake City, a municipal corporation, and Oakland Construction Company : Brief of Appellant

Utah Supreme Court

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Donald J. Purser; Attorney for Respondent.

L.A. Dever; Robert M. McRae; Mcrae and DeLand; Attorneys for Appellant.

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**BRIEF**

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DOCKET NO. 1986 21007 IN THE SUPREME COURT OF UTAH

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RONALD L. INGRAM, :

Plaintiff/Appellant, :

vs. :

SALT LAKE CITY, a municipal : Case No. 21007

corporation, and OKLAND : Category No. 13b

CONSTRUCTION COMPANY, :

Defendants/Respondents. :

-----

BRIEF OF APPELLANT

-----

APPEAL FROM AN ORDER GRANTING SUMMARY JUDGMENT FOR  
 DEFENDANT SALT LAKE CITY AND AGAINST PLAINTIFF, IN  
 THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE  
 COUNTY, STATE OF UTAH  
 The Honorable Homer F. Wilkinson, Presiding

-----

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**FILED**  
 APR 4 1986

PARTIES IN DISTRICT COURT:

Ronald L. Ingram - plaintiff

Salt Lake City, a municipal corporation - defendant

Okland Construction - defendant

Ford Motor Company - defendant (plaintiff's case against  
Ford was severed from the  
other defendants)

PARTIES TO THIS APPEAL:

Ronald L. Ingram - plaintiff/appellant

Salt Lake City, a municipal corporation - defendant/respondent

IN THE SUPREME COURT OF UTAH

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RONALD L. INGRAM,	:	
Plaintiff/Appellant,	:	
vs.	:	Case No. 21007
SALT LAKE CITY, a municipal	:	Category No. 13b
corporation, and OKLAND	:	
CONSTRUCTION COMPANY,	:	
Defendants/Respondents.	:	

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IN THE SUPREME COURT OF UTAH

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RONALD L. INGRAM,	:	
Plaintiff/Appellant,	:	
vs.	:	Case No. 21007
SALT LAKE CITY, a municipal	:	Category No. 13b
corporation, and OKLAND	:	
CONSTRUCTION COMPANY,	:	
Defendants/Respondents.	:	

-----

BRIEF OF APPELLANT

-----

STATEMENT OF THE CASE

Ford Motor Company was named in the original complaint as a defendant on a products liability claim involving a one car accident, but for purposes not relevant herein, the cases were severed and Ford Motor Company is not a party to this appeal. (R. 47-49)

Ingram's suit against Salt Lake City and Okland Construction Company (hereinafter referred to as "Okland") seeks recovery for injuries he suffered when he stepped on a water meter cover located on a public sidewalk in the Sugarhouse area, which gave way, and caused him to fall into the vault. Plaintiff alleged negligent design and construction by Okland and negligence by Salt Lake City in its inspection and acceptance of Okland's work and failure to remedy an obvious defect in a public sidewalk. (R. 2-6)

Salt Lake City was granted summary judgment on the grounds of governmental immunity. (R. 149-150)

The case against Okland was tried to a jury which found no cause of action against Okland on October 8, 1985, which judgment on the verdict was filed and entered by the Clerk on October 9, 1985.

Plaintiff thereafter filed this appeal on November 5, 1985, challenging the summary judgment granted against him in favor of Salt Lake City. (R. 233-234)

#### STATEMENT OF THE FACTS

Plaintiff's Complaint alleges that on October 17, 1984, while walking on a public sidewalk, he stepped on a water meter cover, which gave way, and he fell into the manhole, suffering injuries. Plaintiff further alleges negligent installation and design of the cover in that the cover rested on top of the sidewalk surface and was not designed in a proper manner with a ring to hold said manhole cover below the sidewalk surface. Negligence was alleged on the part of Okland in installation of the same and negligence on the part of Salt Lake City in inspection, acceptance of the work and permitting a continuance of a negligent condition, and failing to remedy a defective condition on a public sidewalk. (R. 2-6)

The Answer of Salt Lake City and Okland, filed through common counsel, denied the allegations of the



Complaint and among other defenses, specifically raised the defense of governmental immunity as well as the codification thereof set forth at §63-30-10(1) et seq. (R. 15-19)

On January 14, 1985, Okland and Salt Lake City filed motions for severance of Ford Motor and Partial Judgment on the Pleadings; and Dismissal of Punitive Damage Claims (R. 21-22); and Memorandum in support thereof. (R. 25-34)

Salt Lake City claimed immunity under the Governmental Immunity Act for the following reasons:

a) failure to comply with the notice requirements;  
and

b) negligent inspection is not specifically excluded from the waiver of immunity. (R. 28-31)

Plaintiff's response to the claim of governmental immunity alleged compliance with the notice requirements, attaching copies of the same and specifically alleged §63-30-8 U.C.A. waives immunity for ". . . injury caused by a defective, unsafe or dangerous condition of any . . . street, alley, crosswalk, sidewalk, . . . or other structure located thereon." (R. 36-38)

After oral argument and review of the memorandum the Court found as follows:

1) The motion to sever Ford Motor Company was granted;

2) The motion of Salt Lake City for partial summary judgment on the pleadings based on the Governmental Immunity Act was denied without prejudice for defendant to renew at a later date; and,

3) The motion to dismiss the punitive damage claims was granted with leave to plaintiff to amend his pleadings within thirty days. (R. 47-48)

Thereafter on May 28, 1985, Salt Lake City again moved for summary judgment (R. 66) relying upon the Governmental Immunity Act supported with Affidavit of Parviz Rokhva. (R. 75-78).

Plaintiff likewise moved for summary judgment (R. 84) as to liability with supporting affidavits of Michael McRae (R. 88-89), Kay Campell (R. 85-86), L. A. Dever (R. 109-110), Kay Overson (R. 119-120), and ten photographic exhibits identified in plaintiff's deposition.

Salt Lake City submitted the Affidavit of Fredrick Strasser in opposition to plaintiff's motion. (R. 96-98)

These motions, memorandum, and affidavits along with the prior motion of Salt Lake City for summary judgment, plaintiff's response, and the Complaint and Answer constituted the record before the Court and are set forth in more detail below. The District Court file reasonably outlines the uncontroverted facts and admissions and contested facts. Therefore transcripts of the oral argument at the hearing on

summary judgment and of the trial between plaintiff and Okland are not necessary to resolve the issues presented on appeal.

1. Salt Lake City contracted with Okland for the construction of the Sugarhouse Beautification Project which consisted of renovation of the Sugarhouse area. (Rokhva Affidavit submitted by defendant R. 75-77)

2. As part of the project, the grade of the road known as 21st South was raised. The water meter vault, located between the curb and gutter for 21st South, (at 1019 East 2100 South, Salt Lake City) on the North side of 21st South also was raised to the level of the sidewalk (Rokhva Affidavit R. 75-77)

3. On October 17, 1984, Ingram stepped on the edge of the water meter cover, which gave way, allowing Ingram to fall into the water meter vault. (Defendant's Memorandum citing to Complaint and Plaintiff's Answers to Interrogatories, R. 71)

4. Mr. Rokhva, the engineer employed by Salt Lake City on the project, stated in his Affidavit, which was offered by Salt Lake City: (R. 75-77)

par. 7: On a project of this size, the inspection of a water meter is made by visual means only.

par. 8: He personally inspected the water meter vault after the accident.

par. 11: "The defect in the lid for the water meter vault is not obvious or subject to detection through a reasonably thorough inspection; if centered properly, the lid can be walked on; it

is only when the lid is off-center that it may constitute a hazardous condition."

5. The Affidavit of Fredrick Strasser, Okland's project superintendent on the project, submitted by Salt Lake City alleges as follows: (R. 96-98)

par 4: Pursuant to the specifications for the project submitted by Salt Lake City, Okland was to reuse the existing frames, lids and gratings in raising the structures to grade. Okland did not purchase the water meter vault ring and cover in controversy.

par. 5: Okland was not directed to use anything other than the existing ring and lid.

par. 7: Normally a water meter lid and cover is visually inspected.

par. 9: "At the time the project was under construction, nothing about the particular water meter lid and cover, based upon a visual inspection, caused me to believe that it was not in compliance with industry standards; the cover and lid could have had concentric rings underneath the cover to keep it from sliding."

par. 10: "The underneath of the cover is ribbed; the workmen installing the cover easily could have assumed that these crossing ribs were designed to keep the lid in place and to keep it from sliding."

In opposition to defendants' affidavits and in support of his motion for summary judgment, plaintiff submitted the affidavit of Kay Campbell, (R. 85-86), a licensed plumbing contractor in the State of Utah, who examined Ingram deposition Exhibits 1 through 10 dated January 16, 1985. (These were pictures of the manhole and manhole lid cover in question taken by Michael McRae - Affidavit, R. 88-89)

par. 2: Mr. Campbell stated he was familiar with the industry standards for the setting of water meter manhole lids and particularly in sidewalk areas and areas subject to pedestrian or vehicle traffic of any kind.

par. 3: That the lid was not set in a ring type devise making the top service of the lid securely flush with the top of the manhole liner securing it in position so it would not slide or tilt when weight was applied to an edge contrary to safety standards in the industry.

par. 5: That there are convenient methods of installing a proper ring holder over the existing manhole liner and existing ring, when raising a manhole to a higher level, to insure meeting proper industry standards.

Plaintiff also submitted the Affidavit of Kay Overson, public works director of Vernal City. (R. 119-120) He inspected Ingram deposition Exhibits 1 - 10 (pictures of the manhole and manhold lid cover. R. 88-89) and Exhibits 1-4 (relevant contract provisions between Salt Lake City and Okland produced by defendants at depositions. Affidavit of L. A. Dever, R. 109-110) Based upon those examinations he believed the manhole design and lid cover were in violation of reasonable and ordinary construction standards.

Salt Lake City's Motion for Summary Judgment and plaintiff's Motion for Summary Judgment were orally argued to the Court July 26, 1985.

On August 21, 1986, a written Order was entered denying plaintiff's motion and granting Salt Lake City's motion. (R. 149-150)

## SUMMARY OF ARGUMENTS

### POINT I

Plaintiff claims his injuries were a result of an unsafe or dangerous condition of a sidewalk. Governmental Immunity is waived for such injuries under §63-30-8 U.C.A. and Salt Lake City has a nondelegable duty of due care to maintain sidewalks in a reasonably safe condition.

Salt Lake City's reliance upon §63-30-10(1)(d) stating immunity is not waived for negligent inspection by an employee is not applicable to the facts of this case, where the city was actively involved in the specifications and supervision of the construction project, and did far more than merely inspect, or fail to inspect, the manhole.

The manhole was located between the sidewalk and street and was a necessary path of pedestrian traffic. It is more akin to sidewalk than "other public improvement."

### POINT II

If the manhole is not part of the sidewalk then it is part of the water system operated and maintained by the City. Under the new test set forth in Standiford v. Salt Lake City, and later cases interpreting the same, operation of a sewer system (and the same reasoning should apply to a water system) is not an exercise of a governmental function and therefore the general grant of governmental immunity should not apply.

POINT III

Assuming governmental immunity does apply, and the manhole falls under the definition of "public improvement" for which immunity is not waived for "latent defects" summary judgment was not appropriate because there is a contested issue of fact as to whether a reasonably careful inspection would have revealed the defect.

ARGUMENTS

POINT I

PLAINTIFF'S CLAIMS AGAINST SALT LAKE CITY ARE NOT BARRED BY THE GOVERNMENTAL IMMUNITY ACT.

Salt Lake City argues in its Memorandum in support of its Motion for Summary Judgment (R. 70-74) that plaintiff's claims are barred under the following two provisions of the Utah Governmental Immunity Act:

1) §63-30-10(1)(d): immunity waived for the negligent act or omission of an employee unless it arises out of failure to make an inspection or negligent inspection.<sup>1</sup>

2) §63-30-9: immunity waived for dangerous or defective condition of a public building . . . or other public improvement but immunity is not waived for latent defective conditions.<sup>2</sup>

<sup>1</sup> Set forth in Addendum, page 1

<sup>2</sup> Set forth in Addendum, page 2

Salt Lake City's claims for governmental immunity cited above fail in view of the language of §63-30-8 U.C.A. 1953 which states:

Immunity from suit of all governmental entities is waived for any injury caused by a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk . . . or other structure located thereon.

The manhole in question was located in what is commonly referred to as a "parkway"<sup>3</sup> that area between a public sidewalk and public street. (See diagram at R. 111 attached in Addendum) Salt Lake City owned and was reconstructing this area, along with the paved sidewalk area, when it raised the grade. It is plaintiff's position this area is within the definition of sidewalk or highway of §63-30-8 U.C.A. It is apparant that a person walking on the sidewalk must necessarily walk across this portion to reach their vehicle parked on the street. The entire area was used by pedestrians.

A city has a nondelegable duty to exercise due care in maintaining streets and sidewalks within its corporate limits in a reasonable safe condition for travel. Murray v. Ogden City, 548 P.2d 896, 897 (Utah 1976) The plaintiff in

<sup>3</sup> Defined as: A walk and planted border beside a roadway of a street. The Random House Dictionary of the English Language (copyright 1966 by Random House, Inc.)



that case fell into a hole in the sidewalk of Ogden City. The hole had originally contained a water meter used by Ogden City "in its proprietary capacity."

Prior to the accident the meter was removed and the hole covered by the city with a lid which fitted into a ring flange, all even with the surface of the sidewalk. The Supreme Court held that once the city removed the meter it ceased to use the hole in its proprietary capacity and the lid became part of its sidewalk which is part of its public streets.

This case was prior to Standiford v. Salt Lake City Corporation, 605 P.2d 1230 (Utah 1980) and used the "proprietary" versus "governmental" function analysis. While the meter was used as a water meter, immunity was waived because it was a "proprietary" function. Once it ceased being used as a water meter, it became part of the sidewalk and immunity was likewise waived under the Act.

The manhole in question directly abuts a public street on one side and directly abuts a public sidewalk on the other side, is within the possession and control of the city, and is clearly and necessarily used for pedestrian traffic in getting from the sidewalk to the street. Common sense dictates this area would more closely resemble a sidewalk or street rather than another public improvement.

In reversing a Summary Judgment granted in favor of the City the Court in Bowden v. Riverton, 656 P.2d 434 (Utah

1983), stated that whether the city fulfilled its duty to maintain the city streets in a safe condition was a question of fact which should be determined by the jury.

Plaintiff's Affidavits allege that in raising a manhole to a higher level there are numerous available and convenient methods of installing a proper ring holder, to meet industry standards, and which was not done in this case. Salt Lake City not only has the nondelegable duty to maintain the sidewalks in a safe condition, and could have been held liable for Okland's negligence in selection of the ring and cover, but in this case it was the decision and specific instruction of Salt Lake City to Okland to use the "existing ring and lid." Plaintiff's Affidavits contradict Salt Lake City's Affidavits as to the acceptable standard of care in the industry and the reasonableness of Salt Lake City's actions.

#### POINT II

OPERATION OF A WATER SYSTEM OR SEWER SYSTEM IS NOT A GOVERNMENTAL FUNCTION.

Assuming for the sake of argument the manhole is not part of the sidewalk, the question then arises as to how operation and maintenance of a water system, the water meter cover being a part thereof, fits into the statutory scheme of the Governmental Immunity Act.

The manhole in question was part of a water system operated by Salt Lake City.

Section 63-30-3, as amended by the 1978 Legislature, reads as follows:

Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, governmentally - owned hospital, nursing home, or other governmental health care facility. [Emphasis added]

As was discussed in Standiford v. SLC Corporation, 605 P.2d 1230 (Utah 1980) this general grant of immunity only extends to injuries resulting from the exercise of a governmental function and since the act does not define "governmental function" it grants to the courts the power to define it. The court abandoned the "governmental function" vs. "proprietary function" analysis which lead to irreconcilable differences in decisions and set forth a new test for determining governmental immunity. That test is "whether 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." Ibid. at pg. 1236-1237. The court further stated that this new standard clearly broadens governmental liability which is consistent with the legislative intent in §63-30-1 et seq.

Standiford was reaffirmed by Johnson v. SLC Corporation, 629 P.2d 432 (Utah 1981) and which further clarified the new test and stated at pg. 434:

The first part of the Standiford test-activity of such a unique nature that it can only be performed by a governmental agency - does not refer to what government may do, but to what government alone must do. . . . The second part of the Standiford test - "essential to the core of governmental activity" -, which refers to those activities not unique in themselves (and thus not qualifying under the first part) but essential to the performance of those activities that are uniquely governmental.

In Thomas v. Clearfield City, 642 P.2d 737 (Utah 1982) the issue was whether collection and disposal of sewage were essential to the core of governmental activity and therefore barred by the Governmental Immunity Act. The court applied the Standiford test and held it was not uniquely governmental or essential to the core of governmental activity. Their analysis of the nature of the activity set forth at p. 739 is applicable in the instant case.

Again in Dalton v. Salt Lake Suburban Sanitary District, 676 P.2d 399 (Utah 1984) it was held that operation of a sewer system is not a governmental function.

If the manhole is determined to be part of a water system operated by the city rather than part of the sidewalk maintained by the city, plaintiff's action still is not barred by the Governmental Immunity Act, because under the case law, operation of a water system is not a governmental function. The case should be remanded and plaintiff allowed to present evidence of the duty of care and reasonableness of Salt Lake City's actions in operation of the water system.

POINT III

SUMMARY JUDGMENT WAS NOT APPROPRIATE EVEN UNDER THE LATENT DEFECT THEORY.

Even if Salt Lake City's analysis of the case is correct; that is, that installation and maintenance of the water system and manhole is a governmental function, that it is a public improvement, and that the defect is a latent one, summary judgment was not appropriate.

Summary judgment is proper only if the pleadings, depositions, affidavits, and admissions show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. [citation omitted] If there is any doubt or *uncertainty concerning questions of fact*, the doubt should be resolved in favor of the opposing party. . . . [citation omitted] Although summary judgment may on occasion be appropriate in negligence cases, it is appropriate only in the most clear cut case. Bowden v. Riverton, 656 P.2d 434 p. 436-437 (Utah 1982)

A latent defect was defined in Vincent v. Salt Lake County, 583 P.2d 105 (Utah 1978) as, "a defect which reasonably careful inspection will not reveal." The Affidavits offered by Salt Lake City stated that inspection was by visual means only. Whether or not such an inspection is reasonable is a question of fact which should be decided by the jury and which plaintiff's Affidavits alleged was not done in accordance with industry standards in this case.

## CONCLUSION

Plaintiff requests that this Court hold his action is not barred by the Governmental Immunity Act under either or both of the following arguments:

a) The manhole was located on a sidewalk or street and immunity is expressly waived for a defective, unsafe or dangerous condition.

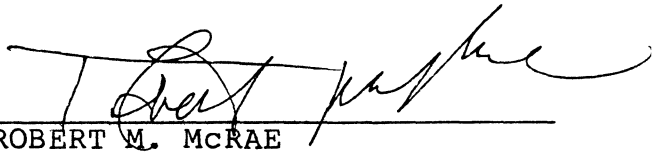
b) If the manhole and the area in which it was located is not a sidewalk, then the operation of the water system is not a "governmental function" as defined by the courts and not entitled to protection under the act.

Even if Salt Lake City is successful in its argument that it is a latent defect in a public improvement, summary judgment still was not proper because the matters before the Court show there are disputed questions of fact to be resolved.


Plaintiff requests that the Order granting Summary Judgment be reversed on the grounds that plaintiff's action is not barred by the Governmental Immunity Act and that the case be remanded for a determination of the standard of care which Salt Lake City owed to plaintiff; alternatively, that summary judgment be reversed on the grounds that there are genuine issues of material fact to be resolved as to whether the defect was "latent" and the case remanded to allow evidence of the same.

DATED this 4<sup>th</sup> day of April, 1986.

Respectfully submitted,  
McRAE & DeLAND

  
\_\_\_\_\_

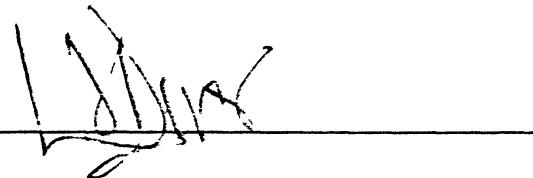
ROBERT M. McRAE

  
\_\_\_\_\_

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Vernal, Utah 84078

CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, four (4) true and correct copies of the foregoing Brief of Appellant to Donald J. Purser, Attorney for Respondents, 340 East Fourth South, Salt Lake City, Utah 84111 on this 4<sup>th</sup> day of April, 1986.

  
\_\_\_\_\_

scope of employment, or under color of authority" for "while in the scope of his employment"; and deleted "Utah Code Annotated 1953, as amended by chapter 86, Laws of Utah, 1961" at the end of the section.

**63-30-8. Waiver of immunity for injury caused by defective, etc.**

**Discretionary function.**

The design of a system of traffic-control semaphores did not involve "the basic policy making level" nor constitute a discretionary

act for which 63-30-10 would provide immunity to the state in a tort action alleging dangerously designed, constructed and maintained electric traffic-control semaphores caused an auto accident resulting in personal injury. *Bigelow v. Ingersoll* (1980) 618 P 2d 50.

**63-30-9. Waiver of immunity for injury from dangerous, etc.**

**Latent defective condition.**

Defect in a county storm drain that was

discoverable by a reasonable inspection would not be a latent defect. *Vincent v. Salt Lake County* (1978) 583 P 2d 105.

**63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee — Exceptions — Waiver for injury caused by violation of fourth amendment rights.** (1) Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of [his] employment except if the injury:

- (a) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused; or
- (b) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or civil rights; or
- (c) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization; or
- (d) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property; or
- (e) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause; or
- (f) arises out of a misrepresentation by [said] the employee whether or not [such] it is negligent or intentional; or
- (g) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances; or
- (h) arises out of or in connection with the collection of and assessment of taxes; or
- (i) arises out of the activities of the Utah National Guard; or
- (j) arises out of the incarceration of any person in any state prison, county, or city jail or other place of legal confinement; or
- (k) arises from any natural condition on state lands or the result of any activity authorized by the State Land Board[-]; or
- (l) arises out of the activities of providing emergency medical assistance, fighting fire, handling hazardous materials, or emergency evacuations.

(2) Immunity from suit of all governmental entities is waived for injury proximately caused or arising out of a violation of protected fourth amendment rights as provided in Chapter 16, [of] Title 78 which shall be the exclusive remedy for injuries to those protected rights. If Section 78-16-5 or Subsection 77-35-12(g) or any parts thereof are held invalid or unconstitutional, this Subsection (2) shall be



§63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement - Exception. - Immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement. Immunity is not waived for latent defective conditions.

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FILED IN DEPARTMENT OF  
SALT LAKE COUNTY, UTAH

DEC 17 2 10 PM '84

H. BIXEN HILL, CLERK  
3RD DIST. COURT

*R. W. Thompson*

514

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

RONALD L. INGRAM,

Plaintiff,

vs.

FORD MOTOR COMPANY, SALT LAKE  
CITY, a municipal corporation,  
and OKLAND CONSTRUCTION  
COMPANY,

Defendants.

COMPLAINT

Civil No.

6807417

Plaintiff complains of defendant and alleges as follows:

VENUE

1. The amount of plaintiff's damages are in excess of TEN THOUSAND DOLLARS (\$10,000.00) for both general and special damages.

FACTS

2. On August 18, 1984, at approximately 12:00 noon, plaintiff was operating a 1984 Ford Bronco II on Highway 40 at approximately mile post 167 in Uintah County, Utah.

000002

3. At the above time and place plaintiff's vehicle veered off of the main portion of Highway 40 and into a ditch striking the opposing side of said ditch in a head on fashion.

4. At the time and place in question plaintiff was properly wearing his shoulder harness type seat belt installed as original equipment on the subject vehicle.

5. As a result of the impact plaintiff was injured sustaining a compression fracture to his thoracic lumbar spinal area.

6. The subject motor vehicle was manufactured, designed and placed in commerce by the defendant.

#### LIABILITY ALLEGATIONS

7. Plaintiff at all times was entitled to rely upon the express and implied warranties of defendant that the use of a seat belt restraint was a safety device.

8. As a result of the subject collision and impact the retraction device contained in the wall of the driver's side of the subject motor vehicle dislodged from its mounting.

9. Defendant was negligent in the design of the mounting bracket for the retraction device bolt in permitting such a designed device to be used for the intended safety of occupants of motor vehicles.

10. The sole proximate cause of plaintiff's injuries is a design defect which could be both economically and feasibly corrected and but for said design defect plaintiff

would not have been injured in the manner and to the extent that he has been injured.

#### DAMAGES

11. As a result of the foregoing accident, plaintiff sustained a compression fracture which will cause him both temporary and permanent partial disability and has and will sustain medical bills in amounts yet to be determined.

#### PUNITIVE DAMAGES

12. The subject design of the mounting bracket for shoulder harness on Ford Bronco II is an obvious defect.

13. Defendant Ford Motor Company is guilty of gross negligence and willful, wanton misconduct in failing to adequately safety test vehicles of the design and nature of the vehicle plaintiff was driving entitling plaintiff to an award of general and punitive damages as well as reimbursement for all medical expenses.

#### CLAIMS AGAINST SALT LAKE CITY AND OKLAND CONSTRUCTION

14. On October 17, 1984, the plaintiff was seeking therapy at the Shields Orthopedic Appliance store in Salt Lake City, Utah.

15. Upon exiting said business establishment, plaintiff was on a public sidewalk and stepped on a water meter cover.

16. Said water meter cover had been installed as a Sugarhouse Beautification Project under a contract between

defendant Salt Lake City and defendant Okland, who was the contractor performing the necessary work.

17. Defendant Okland was negligent in the installation of the man-hole cover in that said man-hole cover rested on top of the sidewalk surface and was not designed in a proper manner with a ring to hold said man-hole cover below the sidewalk surface.

18. The design and installation of said man-hole cover was such that an ordinary pedestrian would not have detected its negligent design and construction.

19. Defendant Salt Lake City was negligent in the inspection and acceptance of defendant Okland's work product and the permitting of the continuance of the existence of a negligent condition and failing to remedy an obvious defect in a public sidewalk.

20. By virtue of the acts of these defendants plaintiff fell into the subject man-hole and potentially compounded injuries already sustained more particularly set forth in paragraphs 3 through 13 above.

21. The acts of these defendantw were in gross disregard for the human safety of persons such as the plaintiff, entitling plaintiff to punitive damages.

WHEREFORE, plaintiff requests tne trier of facts to award a judgment for all damages, both general and special, sustained by plaintiff as a result of each accident and to

apportion those damages in an equitable fashion to the defendants according to their contribution to the negligence; for costs and reasonable legal fees; and for such other and further relief as the Court may deem just and equitable.

DATED this 14 day of December, 1984.

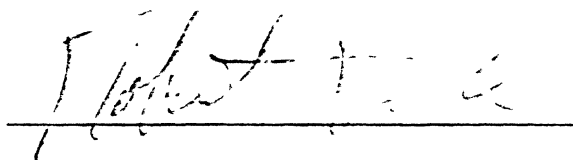
McRAE & DeLAND



ROBERT M. McRAE  
Attorney for Plaintiff

CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, a true and correct copy of the foregoing to Ray Christensen, Attorney for Defendant Ford Motor Company, 900 Kearns Building, Salt Lake City, Utah 84101 on this 14 day of December, 1984.



FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

JAN 14 11 14 AM '05

DEPUTY CLERK  
*Mary Sweet*  
DEPUTY CLERK

DONALD J. PURSER, #2663  
UNGRICHT, RANDLE & DEAMER  
Attorneys for Salt Lake City & Okland Const.  
520 Boston Bldg.  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

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

---

RONALD L. INGRAM,	)	DEFENDANTS SALT LAKE CITY and
	)	OKLAND CONSTRUCTION COMPANY'S
Plaintiff,	)	ANSWER TO COMPLAINT
 	)	
-vs-	)	Civil No. C84-7417
 	)	
FORD MOTOR COMPANY, SALT LAKE	)	Judge Homer F. Wilkinson
CITY, a municipal corporation,	)	
and OKLAND CONSTRUCTION COMPANY,	)	
 	)	
Defendants.	)	

---

TO THE HONORABLE JUDGES OF THIS COURT:

COMES NOW, Donald J. Purser, Esq., for and on behalf of Salt Lake City, a municipal corporation (hereinafter referred to as "Salt Lake City") and Okland Construction Company (hereinafter referred to as "Okland" or "Okland Construction"), answering the Complaint filed by the plaintiff as follows:

**FIRST DEFENSE**

The Complaint, as filed, fails to state a cause of action against either of these answering defendants upon which relief may be granted.

## SECOND DEFENSE

Both of these answering defendants have been misjoined as parties in the lawsuit brought by plaintiff against Ford Motor Company and, as a result of such misjoinder, these answering defendants should be dropped as parties defendant in accordance with Rule 21, Utah Rules of Civil Procedure.

## THIRD DEFENSE

With respect to each specifically enumerated paragraph embodied within the Complaint filed by the plaintiff, these defendants admit, deny and otherwise aver as follows:

PARAGRAPHS 1 & 2. Denied for lack of information, knowledge or belief.

PARAGRAPHS 3, 4, 5 & 6. While these paragraphs do not apply to any act or omission of these answering defendants, for technical purposes, are denied for lack of information, knowledge or belief.

PARAGRAPHS 7, 8, 9, 10, 11, 12 & 13. These allegations do not pertain to any act or omission of these answering defendants; however, for technical purposes, defendants Salt Lake City and Okland Construction Company deny said allegations for lack of information, knowledge or belief.

PARAGRAPHS 14, 15, 16, 17, 18 & 19. These answering defendants deny the allegations contained in said paragraphs.



PARAGRAPH 20. Denied, and these defendants demand strict proof thereof.

PARAGRAPH 21. Denied.

#### FOURTH DEFENSE

Defendant Salt Lake City Corporation is immune from liability pursuant to common law as well as the codification thereof set forth at §63-30-1, et seq., commonly referred to as the Utah Governmental Immunity Act. Pursuant to §63-30-10(1)(a) and (d), the plaintiff's allegations are barred inasmuch as Salt Lake City Corporation and its agents are immune from liability.

#### FIFTH DEFENSE

Plaintiff's claim as against Salt Lake City Corporation is barred pursuant to §63-30-11, Utah Code Annotated (1953, as amended) inasmuch as plaintiff has failed to file a claim for injury or notice thereof with the appropriate office prior to commencing this litigation against Salt Lake City Corporation.

#### SIXTH DEFENSE

The allegations against these defendants are time-barred pursuant to §63-30-13, Utah Code Annotated (1953, as amended).

#### SEVENTH DEFENSE

At the time and place mentioned in plaintiff's Complaint with regard to the acts or omissions of these answering defendants, and at pertinent times prior and subsequent thereto, the negligence of parties other than these answering defendants,

combined and concurring, and over whom these answering defendants had no right of supervision or control, constituted the sole proximate cause and a contributing cause to the plaintiff's claim for injury and damages in such a degree as to preclude recovery from these defendants, Salt Lake City Corporation and Okland Construction Company.

#### EIGHTH DEFENSE

Any damage or injury sustained by the plaintiff which is claimed to have resulted from an act or omission of either of these answering defendants, was caused by a risk of which the plaintiff knew or should of known and which he assumed.

#### NINTH DEFENSE

Plaintiff has failed to mitigate his damages.

#### TENTH DEFENSE

The contributory negligence or assumption of the risk or both of the plaintiff was in a degree equal to or greater than the negligence, if any, of either of these answering defendants which negligence or assumption of the risk or both of the plaintiff was the proximate cause of the injuries and damages complained of. In the alternative, contributory negligence or assumption of the risk are both attributable to a certain degree, to the plaintiff, which negligence or assumption of risk or both of the plaintiff was the proximate cause of the injuries and

damages complained of.

**ELEVENTH DEFENSE**

As a matter of law, the doctrine of res ipsa loquitor is inopposite in cases such as this and any allegations, expressed or implied, based upon that doctrine should be forthwith dismissed.

**TWELFTH DEFENSE**

The plaintiff's injuries and damages were not the result of any negligent conduct by either of these answering defendants.

WHEREFORE, having fully answered the claims of the plaintiff herein, Salt Lake City Corporation and Okland Construction Company hereby pray that the Court dismiss the action filed against them, for an Order awarding costs necessitated by the defense of this action, and for such other and further relief as may be just and equitable in the premises.

DATED this 9<sup>th</sup> day of January, 1985.

UNGRICHT, RANDLE & DEAMER



DONALD J. FURSER  
Attorney for Salt Lake City  
Corp. & Okland Construction

MAILING CERTIFICATE

I hereby certify that I have mailed a copy of the foregoing to Robert M. McRae, Esq., at 209 E. 100 N., Vernal, Utah 84078 and Ray Christensen, Esq., at 900 Kearns Bldg., SLC, Utah 84101 this 10 day of January, 1985; postage prepaid.

John P. [unclear]

1711100

FILLED

FILED IN CLERK'S OFFICE  
Salt Lake County, Utah

FEB 25 1985

H. Dixon Hippley, Clerk 3rd Dist. Court  
By S. W. Childs  
Deputy Clerk

DONALD J. PURSER, #2663  
INGRICH, RANDLE & DEAMER  
Attorneys for Salt Lake City & Okland Const.  
20 Boston Bldg.  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

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

---

DONALD L. INGRAM	)	ORDER
Plaintiff,	)	Civil No. C84-7417
vs-	)	Judge Homer F. Wilkinson
FORD MOTOR COMPANY, SALT LAKE CITY, a municipal corporation, and OKLAND CONSTRUCTION COMPANY,	)	
Defendants.	)	

---

On February 1, 1985, defendants Salt Lake City Corporation and Okland Construction Company moved this Court for an Order reversing their action from the Complaint brought against Ford Motor Company; for Partial Summary Judgment on the pleadings as to Salt Lake City Corporation because of the Governmental Immunity Act; and, both Salt Lake City and Okland Construction Company move for dismissal of the punitive damage claims inasmuch as plaintiff's Complaint failed to state a cause of action upon which said damages might be recovered.

Salt Lake City Corporation and Okland Construction Company as represented by Donald J. Purser, Esq., and plaintiff was

represented by Robert M. McRae, Esq.

After a review of the file, including the Memoranda submitted by the litigants and after hearing oral arguments by counsel, the Court finds and Orders as follows:

1. Salt Lake City and Okland Construction Company's Motion to Sever the above-referenced case from the trial involving Ford Motor Company is granted. The Court notes that Ford Motor Company has not yet been made a party to the State action and therefore plaintiff is permitted to amend his pleadings which should reflect the omission of Ford Motor Company as a party defendant;

2. Defendant's Motion for Partial Judgment on the Pleadings as to Salt Lake City Corporation based on the Governmental Immunity Act is denied, at this time, without prejudice for defendant Salt Lake City Corporation to renew at a later date; and,

3. The Motion of defendants to dismiss the punitive damage claims is granted; however, plaintiff shall have thirty days in which to amend his Complaint to restate or rephrase the averments upon which he claims punitive damages may be recovered.

IT IS SO ORDERED.

DATED This 25 day of February, 1985.

BY THE COURT:

ATTEST  
H. DIXON HINDLEY  
Clerk

*B. A. Childs*  
Deputy Clerk

*Homer F. Wilkinson*  
JUDGE HOMER F. WILKINSON

ASK FOR THIS:

*Donald J. Purser*

DONALD J. PURSER  
Attorney for Salt Lake City  
and Okland Const. Co.

APPROVED AS TO FORM:

*Robert M. McRae*

ROBERT M. MCRAE  
Attorney for Plaintiff

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

MAY 28 11 03 AM '85

H. DIXON HINDLEY CLERK  
3rd DIST COURT

*Dodge*  
Salt Lake City

DONALD J. PURSER, #2663  
MARK A. LARSEN, #3727  
Attorneys for Defendants Okland  
520 Boston Bldg.  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

---

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


---

RONALD L. INGRAM, ) MOTION FOR SUMMARY JUDGMENT  
Plaintiff, )  
-vs- ) Civil No. C84-7417  
FORD MOTOR COMPANY, et al., ) Judge Homer F. Wilkinson  
Defendants. )

---

Pursuant to Utah Rule of Civil Procedure 56, defendant Salt Lake City moves the Court to enter judgment in its favor on the grounds and for the reasons set forth in the Memorandum in Support of Salt Lake City's Motion for Summary Judgment.

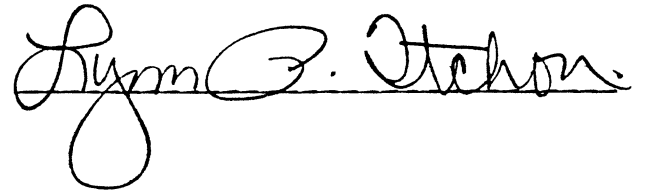
DATED this 24th day of May, 1985.

  
\_\_\_\_\_  
DONALD J. PURSER  
MARK A. LARSEN  
Attorneys for Salt Lake City



MAILING CERTIFICATE

I hereby certify that I have mailed a copy of the foregoing to Robert M. McRae, Esq., at 209 E. 100 N., Vernal, Utah 84078 this 24th day of May, 1985; postage prepaid.

A handwritten signature in cursive script, reading "Lynn E. Johnson", written over a horizontal line.

261i64

**FILMED**

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

MAY 28 11 03 AM '83

*Robert J. Dodge*  
CLERK

DONALD J. PURSER, #2663  
MARK A. LARSEN, #3727  
Attorneys for Defendants Okland &  
520 Boston Bldg.  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

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

RONALD L. INGRAM,	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	SALT LAKE CITY'S MOTION FOR
	)	SUMMARY JUDGMENT
-vs-	)	Civil No. C84-7417
FORD MOTOR COMPANY, et al.,	)	Judge Homer F. Wilkinson
Defendants.	)	

Defendant Salt Lake City ("SLC") files the following Memorandum in Support of Motion for Summary Judgment:

1. SLC contracted with defendant Okland Construction Co. ("Okland") for the construction of the Salt Lake Beautification Project (the "Project"); originally, the amount of the contract was \$1,879,000.00; through change orders, this amount later was increased to approximately \$2,400,000.00. Affidavit of Parviz Rokhva paragraph 4 ("Rokhva Affidavit").

2. The Project was started on March 5, 1984, and was substantially complete on December 5, 1984. Id. at paragraph 5.

3. As part of the Sugarhouse Beautification Project, the grade of the road known as 21st South was raised.

4. A water meter vault, located between the sidewalk and the curb and gutter for 21st South, at 1019 E. 2100 S., Salt Lake City, Utah, which is on the north side of 2100 So., also was raised to the grade of the sidewalk. Id. at paragraph 9.

5. The construction for the water meter vault was completed in mid-August 1984 (Id.) and was valued at approximately \$200.00 (Id. at paragraph 10).

6. Plaintiff Ronald L. Ingram ("Ingram") on August 18, 1984, was injured in an automobile accident. Complaint paragraphs 2-5.

7. On October 17, 1984, allegedly Ingram stepped on the edge of the water meter cover, which gave way, allowing Ingram to fall into the water meter vault. See Complaint paragraph 14; Plaintiff's Answers to Interrogatories dated February 6, 1985, Answer No. 2.

8. The lid and ring for the water meter vault appear to contain a latent defect. Id. at paragraph 11.

9. Ingram filed a Complaint against Salt Lake City, among others, dated December 14, 1984, alleging the negligence of Salt Lake City as a proximate cause of his subsequent injuries.

10. This matter is now before the Court on Salt Lake City's Motion for Summary Judgment.

#### ARGUMENT

INGRAM's CLAIMS AGAINST SLC ARE  
BARRED BY THE GOVERNMENTAL IMMUNITY  
ACT.

Ingram's claims against SLC are barred by the Governmental Immunity Act. Utah Code Anno. § 63-30-13. Ingram alleges the negligence of SLC in paragraphs 18 & 19 of his Complaint, which state as follows:

18. The design and installation of said man-hole cover was such that an ordinary pedestrian would not have detected its negligent design and construction.

19. Defendant Salt Lake City was negligent in the inspection and acceptance of defendant Okland's work product and the permitting of the continuance of the existence of a negligent condition and failing to remedy an obvious defect in a public sidewalk.

Addressing the first part of paragraph 19 first, the Governmental Immunity Act specifically excludes all claims based upon negligent inspection. Utah Code Anno. § 63-30-10(1)(d) (Supp. 1983) states:

Waiver of immunity for injury caused by negligent act or omission of employee--  
Exceptions--Waiver for injury caused by violation of fourth amendment rights.  
(1) Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of his employment except if the injury:

. . . .

(d) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property. . . .

Consequently, Ingram cannot recover against SLC based upon SLC's alleged negligence in inspection of Okland's work.

Concerning the allegation of a latent defect in paragraphs 18 & 19 of the Complaint, the water meter vault is located between the sidewalk and the street. Consequently, because it is neither part of the sidewalk or street, the water meter vault constitutes an "other public improvement" within the meaning of Utah Code Anno. § 63-30-9 which states:

Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement--Exception.--Immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement. Immunity is not waived for latent defective conditions.

(Emphasis added.)


The term "latent defect" as used in the emphasized language means "[a] defect which reasonable careful inspection will not reveal." Vincent v. Salt Lake County, 583 P.2d 105, 107 (Utah 1978). At the time of Ingram's alleged accident, the water meter vault had been constructed in its present state for only two months. The Project was not completed until two months after the accident. A sufficient period of time must lapse before a governmental agency should notice a latent defect. Freeport Transportation Inc. v. Kentucky, 408 S.W.2d 193 (Ky.

1966). The method of inspection a water meter vault in a project of this size would not give SLC a reasonable amount of time to discover this latent defect. Rokhva Affidavit paragraphs 7 & 11.

The water meter vault represented only a very small part of a \$2,400,000.00 project. It consisted of a ring and cover which existed prior to the construction and which, if fitted properly, appeared to be without defect.

Accordingly, summary judgment should be entered in SLC's favor because Ingram's claims are barred by the Governmental Immunity Act.

DATED this 24th day of May, 1985.

  
DONALD J. PURSER  
MARK A. LARSEN  
Attorneys for Salt Lake City

MAILING CERTIFICATE

I hereby certify that I have mailed a copy of the foregoing to Robert M. McRae, Esq., at 209 E. 100 N., Vernal, Utah 84078 this 24th day of May, 1985; postage prepaid.



FILED

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

MAY 28 11 03 AM '85

DONALD J. PURSER, #2663  
MARK A. LARSEN  
Attorneys for Defendants Okland & Salt Lake City  
520 Boston Bldg.  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

H. DIXON HINDLEY, CLERK  
3rd DIST. COURT

*D. J. Purser*  
BY *D. J. Purser*  
Attorneys for Defendants Okland & Salt Lake City

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

RONALD L. INGRAM,	)	AFFIDAVIT OF PARVIZ ROKHVA
Plaintiff,	)	
-vs-	)	Civil No. C84-7417
FORD MOTOR COMPANY, et al.,	)	Judge Homer F. Wilkinson
Defendants.	)	

Defendant Salt Lake City submits the following Affidavit in support of its Motion for Summary Judgment:

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

Parviz Rokhva, after first being duly sworn, deposes and says as follows:

1. I am over 21 years of age and have personal knowledge of the facts contained in this Affidavit.

2. I am employed by Salt Lake City in the Engineering Department, which is subject to the jurisdiction of the Public Works Department.

3. During the building stage, I was assigned as the project

600075

engineer for the Salt Lake Beautification Project.

4. The Salt Lake Beautification Project consisted of renovation of the Sugarhouse area; initially the contract with the general contractor, Okland Construction Company, was for \$1,879,000.00; through change orders, this amount later was increased to approximately \$2,400,000.00.

5. The construction for the Salt Lake Beautification Project started on March 5, 1984, and was substantially complete on December 4, 1984.

6. Among other things, I was in charge of supervising the inspection of this particular project; in inspecting a project of this size, an inspector for Salt Lake City would concentrate on the overall job, including the quality of the workmanship, the quantities being utilized, and other major aspects of the job.

7. On a project of this size, the inspection of a water meter vault is made by visual means only.

8. After Mr. Ingram's accident, I personally inspected the water meter vault, which is the subject matter of this lawsuit and located approximately 1019 E. 2100 So., Salt Lake City, Utah, and which was raised to grade by Okland Construction Company in mid-August 1984.

9. The water meter vault is located in the park area, the area between the curb and gutter for the street and the sidewalk;

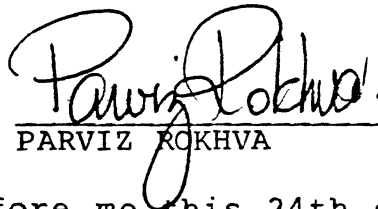


it is not part of either the street or the sidewalk.

10. At the most, the work which Okland performed in raising this particular water meter vault to grade was worth \$200.00.

11. The defect in the lid for the water meter vault is not obvious or subject to detection through a reasonably thorough inspection; if centered properly, the lid can be walked on; it is only when the lid is off-center that it may constitute a hazardous condition.

DATED this 24th day of May, 1985.

  
\_\_\_\_\_  
PARVIZ ROKHVA

Subscribed and sworn to before me this 24th day of May, 1985.

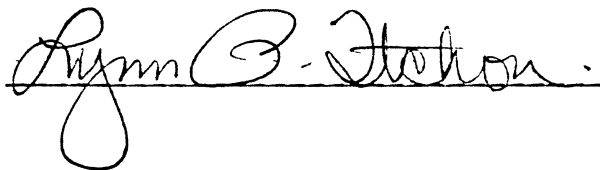
  
\_\_\_\_\_  
NOTARY PUBLIC residing in:

My Commission Expires:

8/1/88

MAILING CERTIFICATE

I hereby certify that I have mailed a copy of the foregoing to Robert M. McRae, Esq., at 209 E. 100 N., Vernal, Utah 84078 this 24th day of May, 1985; postage prepaid.

A handwritten signature in cursive script, reading "Lynn B. Johnson", written over a horizontal line.

261i65

**FILMED**

ROBERT M. McRAE, #2217  
McRAE & DeLAND  
Attorneys for Plaintiff  
209 East 100 North  
Vernal, UT 84078  
(801) 789-1666

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

JUN 12 9 32 AM '85

BY Evelyn Matheson  
CLERK

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

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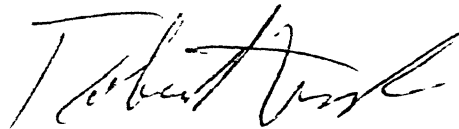
RONALD L. INGRAM,	:	
Plaintiff,	:	
vs.	:	MOTION FOR SUMMARY
	:	JUDGMENT
SALT LAKE CITY, a municipal	:	284-7417
corporation and OKLAND	:	Civil No. <del>284-7414</del>
CONSTRUCTION COMPANY,	:	Judge Homer F. Wilkinson
Defendants.	:	

-----

Plaintiff moves this Court for Summary Judgment on the issue of liability of the defendants. This Motion is based on the Affidavits of Robert Michael McRae and Floyd Kay Campbell filed concurrently herewith and the ten photographic exhibits identified by the plaintiff in his deposition of January 16, 1985.

DATED this 11 day of June, 1985.

McRAE & DeLAND



ROBERT M. McRAE  
Attorney for Plaintiff

- [ 8 ]

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

JUN 12 9 34 AM '85

H. DIXON H. HOLEY CLERK  
3rd DISTRICT COURT  
BY *Eveline Matheson*  
DEPUTY CLERK

ROBERT M. McRAE, #2217  
McRAE & DeLAND  
Attorneys for Plaintiff  
209 East 100 North  
Vernal, UT 84078  
(801) 789-1666

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

-----

FONALD L. INGRAM,	:	
Plaintiff,	:	
vs.	:	AFFIDAVIT
SALT LAKE CITY, a municipal	:	Civil No. <del>084-7414</del> <i>084-7417</i>
corporation and OKLAND	:	Judge Homer F. Wilkinson
CONSTRUCTION COMPANY,	:	
Defendants.	:	

-----

STATE OF UTAH            )  
                                  ): ss.  
County of Uintah        )

FLOYD KAY CAMPBELL, being first duly sworn, deposes  
and says:

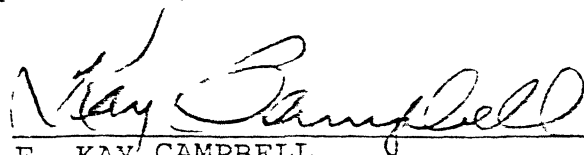
1. Affiant is a licensed plumbing contractor  
in the State of Utah, License No.
2. Affiant is acquainted with proper plumbing  
standards in the industry for the setting of water meter  
man hole lids and more particularly in side walk areas and  
particularly in areas subject to pedestrian or vehicle traffic  
of any kind.

3. Affiant has examined Ingram deposition exhibits one through ten dated January 16, 1985, and observes that the man hole lid does not set in a ring type devise making the top service of the lid securely flush with the top of the man hole liner and securing it in position so that it will not slide from its place of rest and cannot tilt when weight is applied to an edge of the lid.

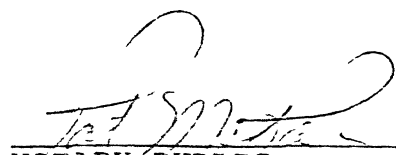
4. The above observations are a reiteration of proper safety standards in the plumbing industry in the State of Utah and have been far in excess of ten years.

5. Should a man hole be required to be raised to a higher level from its former position there are numerous available and convenient methods of installing a proper ring holder over the existing man hole liner and existing ring to insure meeeting proper industry standards.

DATED this 11 day of June, 1985.

  
F. KAY CAMPBELL

SUBSCRIBED AND SWORN to before me this 11  
day of June, 1985.

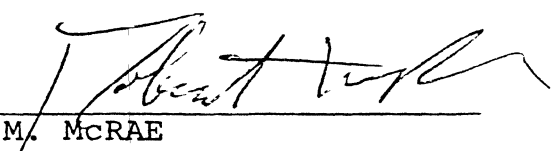
  
NOTARY PUBLIC  
Residing at Vernal, Utah

My commission expires:

12-14-85

CERTIFICATE OF MAILING

I hereby certify that I mailed, postage prepaid,  
a copy of the Motion for Summary Judgment, Affidavit of  
Robert Michael McRae, Affidavit of Floyd Kay Campbell and  
Notice of Hearing to Donald J. Purser, Attorney for Defendant  
520 Boston Building, Salt Lake City, UT 84111 on this 15  
day of June, 1985.

  
\_\_\_\_\_  
ROBERT M. McRAE

ROBERT M. McRAE, #2217  
McRAE & DeLAND  
Attorneys for Plaintiff  
209 East 100 North  
Vernal, Utah 84078  
Telephone: 789-1666

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

JUN 12 9 34 AM '85

H. DIXON HINDLEY CLERK  
3rd DIST. COURT

*Gaylene Matheson*  
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----

RONALD L. INGRAM,	:	
	:	
Plaintiff,	:	AFFIDAVIT
	:	
vs.	:	
	:	
SALT LAKE CITY, a municipal	:	Civil No. C84-7417
corporation, and OKLAND	:	Judge Homer F. Wilkinson
CONSTRUCTION COMPANY,	:	
	:	
Defendants.	:	

-----

STATE OF UTAH            )  
                                  : ss.  
County of Uintah        )

ROBERT MICHAEL McRAE, being first duly sworn, deposes and says:

1. Affiant is a professional photographer by occupation.
2. On or about November 20, 1984, I accompanied my father, who is counsel for the above named plaintiff, to a location in Sugarhouse in front of the Moccasin Shop on 2100 South.
3. I took the photographs marked as deposition exhibits 1 through 10 of the man hole and man hole lid cover and encompassing water meter for said business establishment.

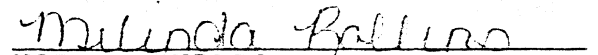
4. Together with my father we personally inquired of the proprietor of the Moccasin Shop as to the function of said man hole and were advised that it was the water meter for said Moccasin Shop and personally examined said meter within the man hole and determined that it was a municipal type water meter.

5. The ten described pictures fully and accurately portray the condition of the man hole lid and shape of the water meter man hole which does not contain a seating ring for the man hole lid.

DATED this 011 day ~~of May~~, 1985

  
ROBERT MICHAEL MCRAE

~~June~~ <sup>June</sup> SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of ~~May~~, 1985.

  
NOTARY PUBLIC  
Residing at Vernal, Utah

My commission expires:

3-19-88



**FILMED**

FILED IN CLERKS OFFICE  
SALT LAKE COUNTY, UTAH

JUN 24 9 50 AM '85

H. D. ... CLERK  
3RD DIST. COURT

BY *[Signature]*  
DEPUTY CLERK

DONALD J. PURSER  
MARK A. LARSEN  
Attorneys for Salt Lake City  
and Okland Construction Company  
520 Boston Building  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

---

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

---

RONALD L. INGRAM, )  
 ) AFFIDAVIT OF FREDRICK L.  
 ) STRASSER IN OPPOSITION  
 Plaintiff, ) TO MOTION FOR SUMMARY  
 ) JUDGMENT  
-vs- )  
 )  
 FORD MOTOR COMPANY, SALT LAKE ) Civil No. C84-7417  
 CITY, a municipal corporation, ) Judge Homer F. Wilkinson  
 and OKLAND CONSTRUCTION COMPANY, )  
 )  
 Defendants.

---

Defendant Okland Construction Company ("Okland")  
submits the following Affidavit of Fredrick L. Strasser in  
Opposition to Motion for Summary Judgment:

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

Fredrick L. Strasser, being first duly sworn, deposes  
and states as follows:

1. During the summer of 1984, I was Okland's project  
superintendent for the Salt Lake City Beautification Project

(the "Project"), and have personal knowledge of the facts stated in this Affidavit.

2. I was responsible for the overall supervision, construction and inspection of the Project.

3. I am personally familiar with and have examined the water meter vault ring and lid which is in controversy in this case.

4. The Specifications for the Project entitled "Raising Structures to Grade" and relating to rings and covers is found in Section 02401 in Part 2.01, and states:

201. FRAMES, COVERS, AND GRATINGS:  
Unless specified otherwise or directed by Engineer, existing frames, lids, any gratings will be reused.

5. Okland did not purchase the water meter vault ring and cover in controversy or, as a matter of fact, any other water meter vault rings or covers and the engineer did not direct Okland to use anything other than the existing ring and lid.

6. Okland followed the preceding specification in raising the water meter lid and cover to grade.

7. Normally, a water meter lid and cover is visually inspected; there were numerous rings and covers involved in the Project.

8. Personally, I have examined a large number of water meter vault rings and lids; on the Project, over 200 rings and lids were raised to grade.

9. At the time the Project was under construction, nothing about the particular water meter lid and cover, based upon a visual inspection, caused me to believe that it was not in compliance with industry standards; the cover and lid could have had concentric rings underneath the cover to keep it from sliding.

10. The underneath of the cover is ribbed; the workmen installing the cover easily could have assumed that these crossing ribs were designed to keep the lid in place and to keep it from sliding.

DATED this 20<sup>th</sup> day of June, 1985.

Frederick L. Strasser  
FREDERICK L. STRASSER

SUBSCRIBED AND SWORN to before me this 21 day of June, 1985.

Lyman P. Johnson  
Notary Public  
Residing at: Salt Lake Co.

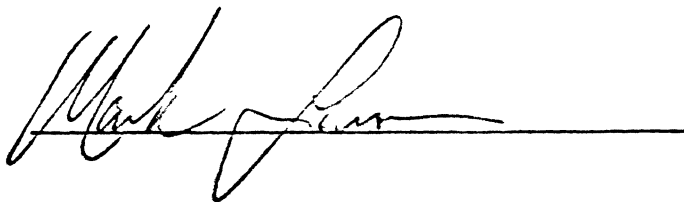
My Commission Expires:

8/1/88

CERTIFICATE OF SERVICE

This is to certify that the undersigned hand-delivered a true and correct copy of the foregoing Affidavit of Fredrick L. Strasser in Opposition to Motion for Summary Judgment to the following this 20th day of June, 1985:

Robert M. McRae  
McRae & Deland  
Attorneys for Plaintiff  
The Whitley Mansion  
132 South 600 East  
Salt Lake City, Utah 84102

A handwritten signature in cursive script, appearing to read "Robert M. McRae", is written over a solid horizontal line.

FILED

ROBERT M. McRAE, #2217  
McRAE & DeLAND  
Attorneys for Plaintiff  
209 East 100 North  
Vernal, Utah 84078  
Telephone: 789-1666

FILED IN CLERKS OFFICE  
SALT LAKE COUNTY UTAH

JUL 22 11 14 PM '85

H. D. ... CLERK  
BY *Subie Young*  
CLERK

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

-----

RONALD L. INGRAM,	:	
	:	
Plaintiff,	:	AFFIDAVIT
	:	
vs.	:	
	:	
SALT LAKE CITY, a municipal	:	Civil No. C84-7417
corporation and OKLAND	:	Judge Homer F. Wilkinson
CONSTRUCTION COMPANY,	:	
	:	
Defendants.	:	

-----

STATE OF UTAH            )  
                                  ): ss.  
County of Uintah        )

L. A. DEVER, being first duly sworn upon his oath  
deposes and states that:

1. He is one of the attorneys for the above named  
plaintiff.

2. On June 28, 1985 at 2:00 p.m., he appeared at the  
offices of Ungricht, Randle & Deamer in Salt Lake City, Utah  
for the purpose of deposing Parviz Rokhva, who at the time of  
his deposition identified himself as a project engineer on the  
subject Sugarhouse Beautification Project.

3. A copy of said contract between defendants was produced at said deposition (T. 13 line 14). Subsequent to the deposing of said witness affiant examined the box of contract papers which included exhibits 1-4 and incorporates the same by reference.

4. Affiant made available to Parviz Rokhva the Ingram deposition exhibits 1 - 10 (photos) dated January 16, 1985.

5. Affiant caused Robert M. McRae, associate counsel for plaintiff, to submit Ingram deposition exhibits 1 - 10 to Kay R. Orverson, Public Works Director, Vernal City Corporation, Vernal, Utah for examination, said Affidavit of Orverson being filed concurrently herewith.


DATED this 19 day of July, 1985.

  
\_\_\_\_\_  
L. A. DEVER

Subscribed and sworn to before me on this 19 day of July, 1985.

My commission expires:

12-14-85

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at Vernal, Utah

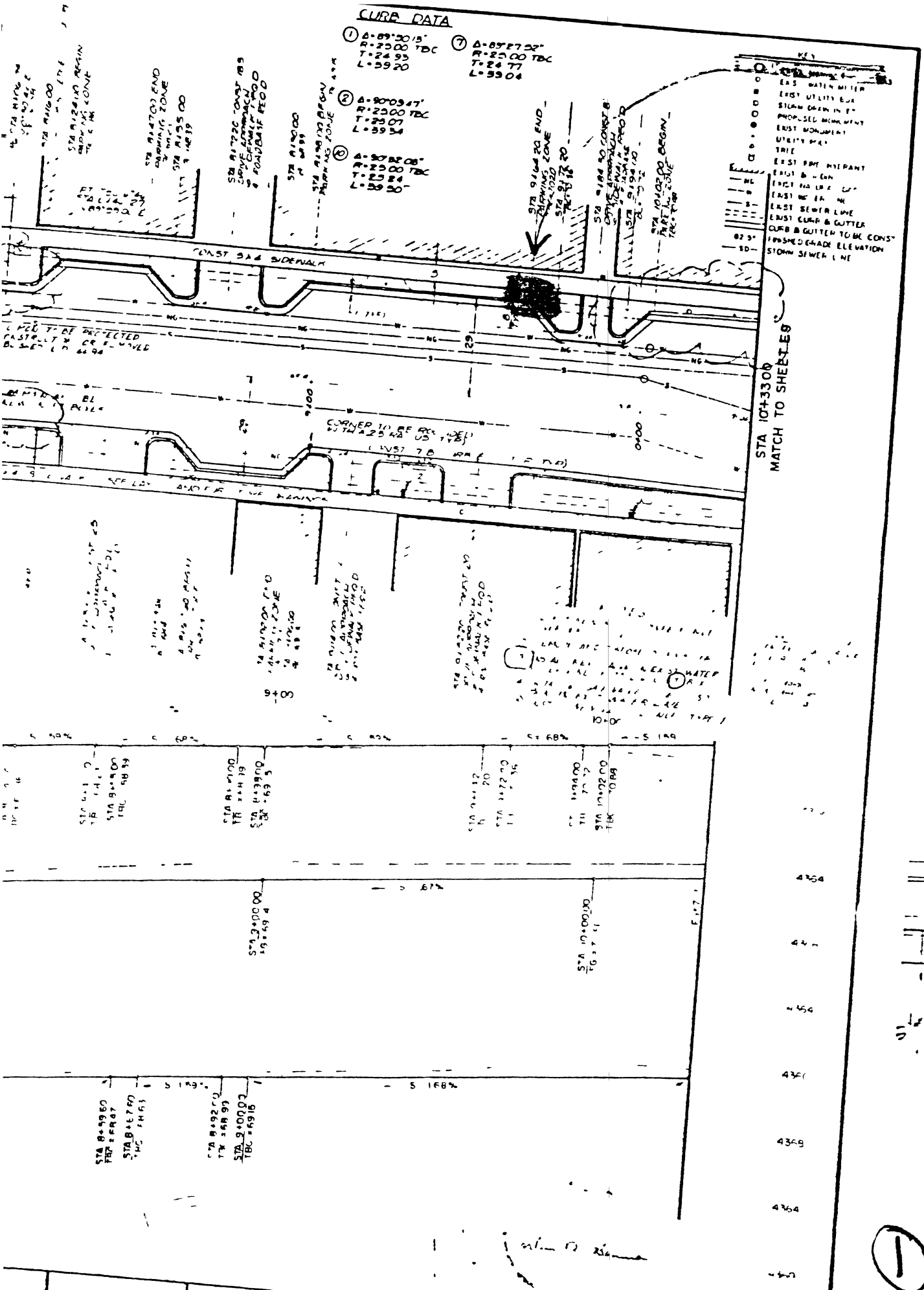
#### CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, a true and correct copy of the foregoing to Judge Homer F. Wilkinson, P.O. Box 1860, Salt Lake City, Utah 84110, and to Donald J. Purser, Attorney for Defendants, 520 Boston Building, Salt Lake City, Utah 84111 on this 19 day of July, 1985.

  
\_\_\_\_\_

**CURB DATA**

- ①  $\Delta = 89^{\circ}20'15"$   
 $R = 2300$  TDC  
 $T = 24.93$   
 $L = 99.20$
- ②  $\Delta = 90^{\circ}09'47"$   
 $R = 2300$  TDC  
 $T = 25.07$   
 $L = 99.34$
- ③  $\Delta = 90^{\circ}09'47"$   
 $R = 2300$  TDC  
 $T = 25.07$   
 $L = 99.34$
- ④  $\Delta = 89^{\circ}20'15"$   
 $R = 2300$  TDC  
 $T = 24.93$   
 $L = 99.20$
- ⑤  $\Delta = 89^{\circ}20'15"$   
 $R = 2300$  TDC  
 $T = 24.93$   
 $L = 99.20$
- ⑥  $\Delta = 89^{\circ}20'15"$   
 $R = 2300$  TDC  
 $T = 24.93$   
 $L = 99.20$
- ⑦  $\Delta = 89^{\circ}27'27"$   
 $R = 2300$  TDC  
 $T = 24.77$   
 $L = 99.04$



STA 10+33.00  
MATCH TO SHEET 189

- KEY**
- EAST WATER METER
  - EAST UTILITY EAS.
  - STORM DRAIN IN P
  - PROPOSED MONUMENT
  - EXIST. MONUMENT
  - UTILITY MAIL
  - TREE
  - EAST SIDEWALK
  - EXIST. SIDEWALK
  - EXIST. SIDEWALK CUT
  - EAST SIDEWALK
  - EXIST. SEWER LINE
  - EXIST. CURB & GUTTER
  - CURB & GUTTER TO BE CONST.
  - FINISHED GRADE ELEVATION
  - STORM SEWER LINE

①







3

# OKLAND CONSTRUCTION COMPANY, INC.

MAIN OFFICE:  
POST OFFICE BOX 15448  
1978 SOUTH WEST TEMPLE  
SALT LAKE CITY, UTAH 84115  
TELEPHONE: (801) 486-0144

February 21, 1984

FEB 21 1984

Salt Lake City Engineers Office  
359 South State Street  
Salt Lake City, Utah 84111

ENGINEERING  
FIELD OFFICE

Attention: Parvis Rokhva

RE: Sugar House Beautification District  
Job 122

Dear Mr. Rokhva:

The following are items about the project that we would like you to review and get back to us upon as soon as possible.

### I Salt Lake City Standard Drawings:

After careful review of the drawings we found that the names for the Standard Salt Lake City Drawings given in the contract drawings do not agree with the names on file with the city for the standard drawings. After several requests to the city on drawings we have received drawings from John Naser and Lynn Anderson, but no explanation of which drawings went to the items called out in the contract drawings.

We have taken time to review the city standard drawing in order to make our best judgement of which drawing covered which item. Below is a summary of our conclusions:

S.L.C. Standard Description	Number	Item in Contract Drawing & Bid Schedule
A) Curb 7 Gutter 1) No. 7-B	2620.21	a) Type 7-B Curb & Gutter b) Pay Item #3
2) No. 13-B	13-A ✓	a) Type 13-B Curb b) Pay Item #4
3) No. 12	Pay item # 42 ✓	a) 4' Conc. Waterway b) No. Pay Item Given
B) Catch Basin No. 1 Single Gate	2620.22 & 5102.6 ✓	a) Inlet #1 b) Type 1 Inlet c) Pay Item #17 (Sch A) Pay Item #9 (Sch B)

*Submittal  
bid  
(temporarily approved)*

"Storm Drains SLC Std. #1

C) Catch Basin No. 2  
Double Grate

2620.23

- ✓ a) Inlet #2
- b) Pay Item #18 (Sch A)
- "Storm Drains SLC Std #2"

*submit*

bid  
D) Catch Basin No. 4  
Curb Opening

2620.24

- a) Storm Drain Inlet #4
- b) No Pay Item Given

E) Manhole No. 2

15030.2 &  
5102.3

*use same unit price as in sch. A #93*

- a) Manhole #2
- b) Type #1 Manhole
- c) Pay Item #93 (Sch A)
- d) No Pay Item Given In (Sc

✓ F) Couldn't find new drive approaches. We will be going by detail 1/E14 of contract drawings

TRUE

- a) SLC Std. #3102.4 (couldn't find)
- b) Pay Item #6 & #7
- Please note that in bid schedule detail 2/E14 is called out, but it should be detail 1/E14

G) Couldn't find new sidewalk ramps. We will be going by detail 2/E14 of contract drawings

TRUE

- a) SLC Std. #3102.3 (couldn't find)
- b) Pay Item #5

H) Couldn't find SLC Std C.O.B. type #1. See drawing E8

M.H. #1 Type  
15030.1

No Pay Item Given

*submit  
bid #17?*

In reference to the above the following is clarification of how we are proceeding.

1. We have attached to this letter all of the Salt Lake City Standard drawings which we have received which appear to apply to our project.
2. It is our understanding that all other standard drawings not attached do not apply to our project.
3. We are proceeding with construction using the drawing listed above as "S.L.C. Standards Description" for the items listed under "Item in contract drawing & Bid Schedule."
4. We have verbally been instructed by the city to change all type #1 manholes to manhole #2. We were also instructed that this held true eventhough standard drawing manhole #2 stated that "when D1 and D2 are less than 25", use manhole No. 1 ...". We are proceeding with this understanding.

*11 items as per drawings*

We have also requested the standard drawings (plus any drawings referred to by these drawings) on 48" and 60" manhole #11950. Please obtain these for us as soon as possible.

*11/17/00  
c.b.f.*

II. In the following areas we need direction from the city on how you want us to proceed. Please give us instructions as soon as possible.

1. In Item I.A.3 above what do you want us to do about the 4' concrete waterway since it is not covered in the bid schedule? This waterway is shown on E-3 and E-13 and may be shown on other drawings.
2. In Item I.D. above what do you want us to do about Catch Basin No. 4 curb opening since it is not covered in the bid schedule? This is shown on E-13 and may be shown on other drawings.
3. In Item I.E. above what do you want us to do about manhole type 1 since neither manhole No. 1 or No. 2 is in bid schedule B? This manhole is shown on E-12 and may be shown on other drawings.
4. In Item I.H. above what do you want us to do about C.O.B. type No. 1 since we do not have a description or drawing how it is to be constructed. Also, it is not covered by the bid schedule. This is shown on E-8 and may be shown on other drawings.
5. As of yet we have not received instructions on what to do about the relocation of fire hydrants since they are not covered in any of the bid schedules. (This question was asked in our meeting 2/9/84). Fire hydrants to be relocated are shown on E-2 and E-11; and may be shown on other drawings.
6. We have been instructed by the city not to order a concrete stamp, but have not been informed as yet if stamping of the concrete will or will not be a requirement of the city. It is our recommendation that the stamp not be used because it will increase up keep on the sidewalk.
7. The following are clarifications needed on the canal covers (E-5 & E-6).

a. On the bid schedule the detail called out on the following items is not correct:

#9 should be 6/E-14 not ~~5/E-14~~  
 #10 should be 7/E-14 not ~~5/E-14~~  
 #11 should be 8/E-14 not ~~5/E-14~~

b. On E-14 it is clear where 5/E-14, 6/E-14, and 7/E-14 occur, but we haven't been able to determine where 8/E-14 occurs. Please give us the information. Sp P.A.J.

c. We have been unable to determine which type of canal lid is to be used for the following areas:

- A. Under the street (E-5 & E-6) #6 → 15' x 20' 8" #6
- B. Under curb, gutter & street (E-5 & E-6) #6 → 15' x 20' 8" #6
- C. Under areas where neither drive approach, sidewalk, curb, gutter, or street occur (E-5). - Nothing #5

d. Do we need to provide any access openings or clean-outs to the canal? Please note that the contract drawings give no reference to these items. Therefore, there are no details or pay items for them.

Check with  
water department

110

?

III. The following are instructions received by us from the city.

1. All items shown on the drawing which do not have a dimensional location are to be located by scaling. Some examples of this are:
  - a. On E-3 some of the manholes have a station in the north south direction but no dimensions or stations are given in the east west direction.
  - b. The most easternly manhole shown on E-3 doesn't have stations or dimensions in any direction.
  - c. The NE inlet no. 2 on 21st South on E-3 doesn't have a location except for the fact that it lies in the gutter and has 41 feet of pipe from it to a manhole.

2-man  
checked  
✓

It is our understanding that the city will supply 2 large size drawings in order to increase the accuracy of scaling the location of the items shown on the drawings.

We would like to state that scaling is not a precise way to locate objects on a 1" equals 20' drawing and not everyone will scale the same. Since we have been asked to scale the drawings it would be understood that the dimensions we scale are the correct dimensions and they do not need approval from others. If there are any objects that the city would like more accurately located or scaled by the city then these dimensions should be given to us before any work related to that object is started.

2. The following are corrections to the drawings:

- a. E-4 pipe on Wilmington is 15" diameter and not 12" diameter.
- b. E-9 pipe on west side of McClelland that is not called out is 28' + of 15" diameter pipe and is to be included in schedule B.

3. The line between schedule A and B is given to be McClelland street and 1100 East in the specification. The city has given us the interpretation that at McClelland street the division occurs at the center line of the street except that we are to complete the 18" diameter pipe shown on E-9, but not the invert at the west end. Please note that if schedule B doesn't go then the city would need to do something to complete the structure at the west end of the 18" pipe. We have received no interpretation of where the line between schedule A & B occurs at 1100 East. It is our interpretation that this should occur at station 16+37.60, please verify.

No change of work  
not bid  
from 100% of total work

4. The city has given us the following interpretation: If the quantity of a bid item shown on the drawings is increased or decreased (Even if as much as 25% or more, See 5.09 of GP.26) from the bid schedule no extra work order is required unless there is a change in the unit price. Please verify if our interpretation of the verbal instructions is correct.

5. We have been instructed that the city is taking care of all variances and we need not be concerned with the variances. To us this means that we can construct the work as shown on the drawings without verifying that variances have been obtained. Please verify that this is a correct understanding.

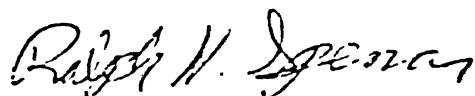
3/5

Please respond to this letter as soon as possible because we plan on starting on site construction in March and have already started ordering material.

If you have any questions please contact us.

Sincerely,

OKLAND CONSTRUCTION COMPANY, INC.

A handwritten signature in cursive script that reads "Ralph H. Spencer".

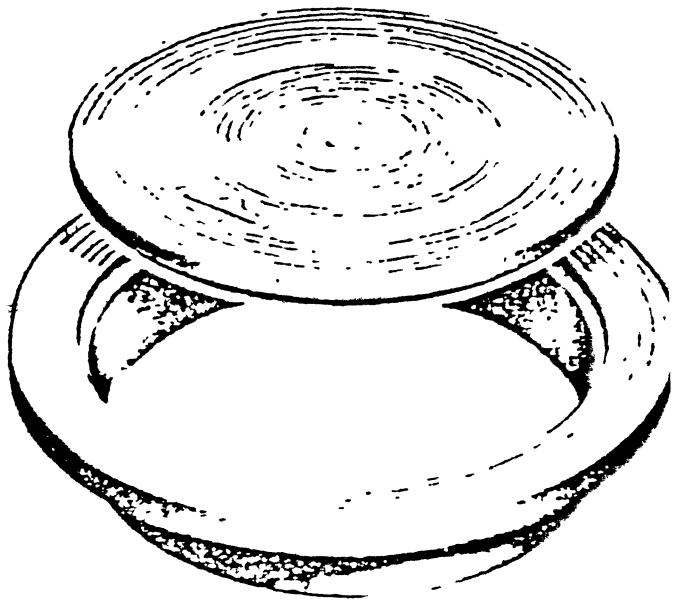
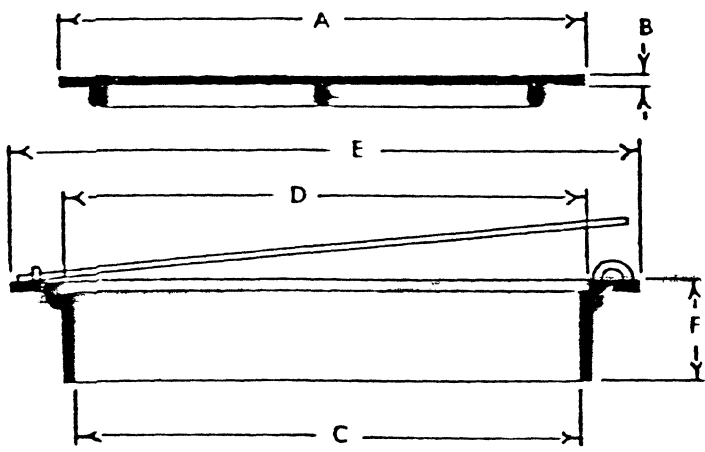
Ralph H. Spencer  
Project Coordinator

RHS/tj

cc: Fred Strasser  
Lynn Anderson

**B-5070 thru B-5090**

**Utility Ring and Cover**



Specify when ordering if lock bar is desired

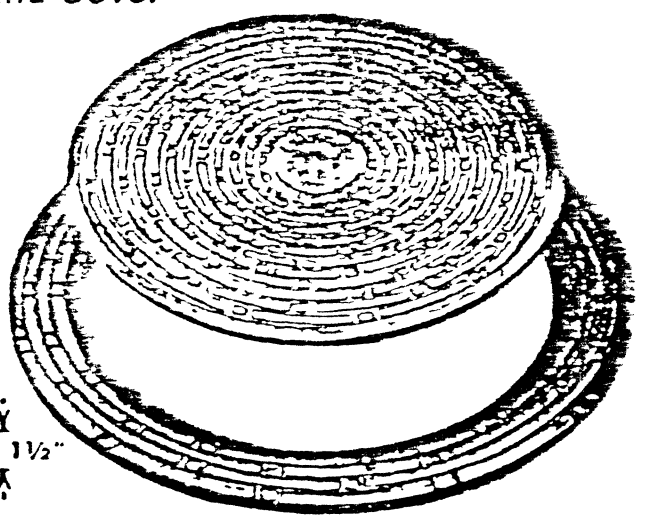
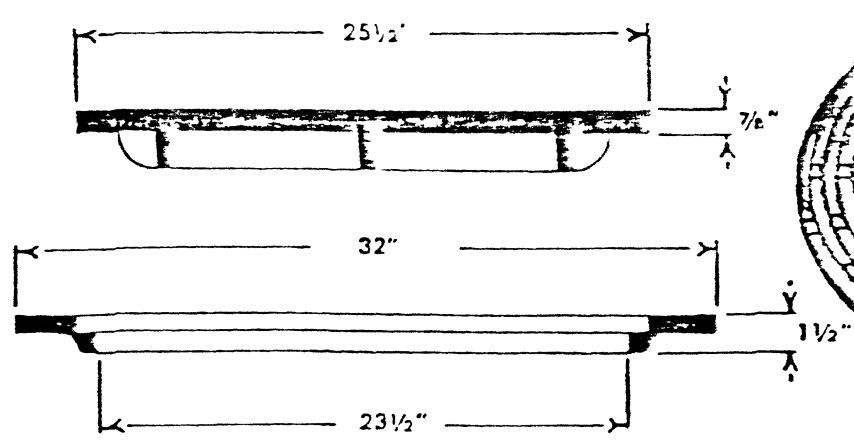
Catalog No	Cover						Total Wt
	A	B	C	D	E	F	
B-5070	18	1/2	16 3/4	18	21 5/8	4	70
B-5072	20 1/8	1/2	18 3/4	20 1/4	24	4	95
B-5074	23	1/2	21 3/4	23 3/8	27	4	123
B-5076	29 7/8	1/2	28 3/4	30	35	4	190
B-5086	23 1/4	3/4	21 1/2	23 1/2	28 1/4	4 1/2	185
B-5088	30 1/4	3/4	28	30 3/8	35 1/2	4 1/2	304
B-5090	30 1/4	7/8	28	30 3/8	35 1/4	4 1/2	363

- New Lid  
- Old Lid

**B-5100**

**Sidewalk Manhole Ring and Cover**

Combined Wt 250 lbs



**FILMED**

ROBERT M. McRAE, #2217  
McRAE & DeLAND  
Attorneys for Plaintiff  
209 East 100 North  
Vernal, Utah 84078  
Telephone: 789-1666

FILED IN CLERK'S OFFICE  
JUL 25 10 07 AM '85  
*K. H. Youngberg*  
CLERK

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

-----

RONALD L. INGRAM,	:	
	:	
Plaintiff,	:	AFFIDAVIT
vs.	:	
SALT LAKE CITY, a municipal	:	Civil No. C84-7417
corporation and OKLAND	:	Judge Homer F. Wilkinson
CONSTRUCTION COMPANY,	:	
	:	
Defendants.	:	

-----

STATE OF UTAH            )  
                                  : ss.  
County of Uintah        )

KAY R. ORVERSON, being first duly sworn upon his oath deposes and states that:

1. He is the Public Works Director of Vernal City Corporation, Vernal, Utan, and has held such job capacity for 4 years.

2. Affiant examined Ingram deposition Exhibits 1-10 and 1-4 attached to the Affidavit of L. A. Dever for purposes of determining whether or not the manhole ring design for purposes of retaining, restraining and securing a manhole

cover such as the one identified in Exhibits 1-10 was designed and property installed.

3. Based upon an examination of Exhibits 1-10 and the industry standards outlined in 1-4 attached to the Affidavit of L. A. Dever, the manhole design, lid cover, ring securing devise (the latter of which is not existant) was designed and defectively installed in violation of reasonable and ordinary construction standards. Page 4 of said exhibits specifically requiring a utility ring or sidewalk manhole ring when using a cover in ordinary foot, pedestrian and vehicular traffic areas, the purpose of same being to not permit the type of accident which took place and is described in both the depositions of Parviz Rokhva and Fred Strother.

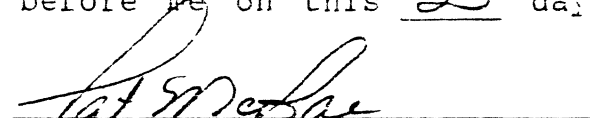
DATED this 23 day of July, 1985.

  
KAY R. ORVERSON

Subscribed and sworn to before me on this 23 day of July, 1985.

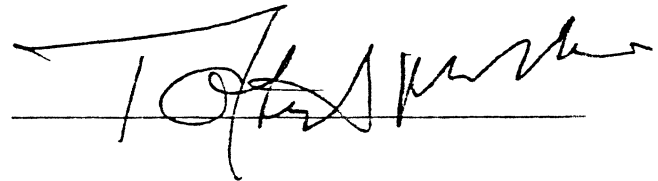
My commission expires:

12-14-85

  
NOTARY PUBLIC  
Residing at Vernal, Utah

#### CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, a true and correct copy of the foregoing to Judge Homer F. Wilkinson, P.O. Box 1860, Salt Lake City, Utah 84110, and to Donald J. Purser, Attorney for Defendants, 520 Boston Building, Salt Lake City, Utah 84111 on this 23 day of July, 1985.





FILMED

FILED IN CLERK'S OFFICE  
Salt Lake County, Utah

AUG 21 1985

H. Dixon Hadden, Clerk, District Court  
By *B. A. Childs*  
Deputy Clerk

DONALD J. PURSER  
MARK A. LARSEN  
Attorneys for Salt Lake City  
and Okland Construction Company  
520 Boston Building  
9 Exchange Place  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

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

---

RONALD L. INGRAM, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
FORD MOTOR COMPANY, SALT LAKE ) Civil No. C84-7417  
CITY, a municipal corporation, ) Judge Homer F. Wilkinson  
and OKLAND CONSTRUCTION COMPANY, )  
 )  
Defendants. )

---

On July 26, 1985, plaintiff's Motion for Summary Judgment and defendant Salt Lake City's Motion for Summary Judgment came on for hearing before the above-captioned Court, the Honorable Homer F. Wilkinson presiding. Plaintiff was represented by Lee Dever; defendants were represented by Mark A. Larsen. After considering the pleadings, Memoranda, Affidavits and other documents in the file, and the oral arguments of counsel, and the Court being fully advised in the premises, IT IS HEREBY ORDERED as follows:

1. Plaintiff's Motion for Summary Judgment is denied.
2. Defendant Salt Lake City's Motion for Summary Judgment is granted; ~~the Complaint against defendant Salt Lake City is dismissed with prejudice.~~

DATED this 21 day of August, 1985.

BY THE COURT:

ATTEST  
H. DIXON HINDLEY  
Clerk  
By B. A. Childs  
Deputy Clerk

Homer F. Wilkinson  
HOMER F. WILKINSON  
District Court Judge

**FILED**

Salt Lake County, Utah

OCT 9 1985

H. Duane Hindley, Clerk 3rd Dist Court  
By Barbara Baker  
Deputy Clerk

INSTRUCTION NO. 36

We, the jury, find from a preponderance of the evidence in this case the following answers to the questions propounded to us:

1. Do you find, from a preponderance of the evidence presented in court, that the water meter vault and lid which forms the basis of plaintiff's claims in this lawsuit was installed in a reasonable manner; that is, the workmanship in the subject installation met the standard of care normally expected of contractors.

Yes  No

2. If your answer to Special Interrogatory No. 1 is "Yes", then you must return a verdict in favor of Okland Construction Company. If your answer is "No", you do ~~not~~ answer the remaining interrogatories. Have your foreman sign the verdict form and return it to the court.

3. Did other persons or entities, excepting Salt Lake City, not parties to this lawsuit, act in a negligent manner so as to cause or contribute to the injuries claimed to have been caused by plaintiff's alleged fall into the water meter vault?

Yes  No

If "Yes", to what percentage of contribution or causation do you find is the responsibility of those non-parties to this lawsuit?

\_\_\_\_\_ % out of 100%

4. Do you find from the evidence that the plaintiff acted in a negligent manner in bringing about some or all of his injuries complained of in this lawsuit?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "Yes", indicate what percentage of contribution or causation said negligence of plaintiff it was, played in being a proximate cause of the plaintiff's injuries complained of in this lawsuit:

\_\_\_\_\_ % out of 100%

5. If your answer to Special Interrogatory No. 1 was "No" then indicate what percentage of contribution or causation, if any, said negligence of Okland played in being a proximate cause of the plaintiff's injuries complained of in this lawsuit?

\_\_\_\_\_ % out of 100%

6. If you have answered Special Interrogatory No. 1 "No" you should then determine what damages, if any, are to be awarded plaintiff as a direct

and proximate cause of the alleged acts of negligence complained of in the Complaint.

6(a) We find plaintiff entitled to the following award of damages as a direct and proximate result of injuries sustained in this lawsuit:

(i) What amount of medical bills, if any, has plaintiff incurred as a result of the negligence of Okland Construction Company?

\$ \_\_\_\_\_

(ii) What amounts of lost wages, if any, has plaintiff incurred as a result of the negligence of Okland Construction Company?

\$ \_\_\_\_\_

(iii) What amount of future lost wages, if any, will plaintiff suffer as a result of the negligence, if any, of Okland Construction Company?

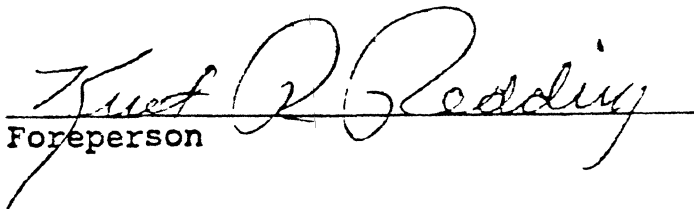
\$ \_\_\_\_\_

(iv) What amount, if any, should plaintiff be awarded as general damages as a result of the negligence, if any, of Okland Construction Company?

\$ \_\_\_\_\_

Dated this 8<sup>TH</sup> day of October, 1985.

Foreperson

  
\_\_\_\_\_