

1998

Edward Esquivel, Norma Esquivel, Richard Esquivel, Angel Esquivel, Edica Esquivel, and Ofelia Herrera, Plaintiffs-Appellants v. Redd Roofing and Construction, and CNA Company, Defendants-Respondents : Notice of Errata Sheet

Utah Court of Appeals

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FILED

Utah Court of Appeals

OCT 29 1998

Julia D'Alesandro
Clerk of the Court

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ORIGINAL

**UTAH COURT OF APPEALS
BRIEF**

IN THE COURT OF APPEALS

UTAH
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STATE OF UTAH

A10
DOCKET NO. —

980084-CA

~~EDWARD ESQUIVEL~~, deceased,
NORMA ESQUIVEL, RICHARD
ESQUIVEL, ANGEL ESQUIVEL,
EDICA ESQUIVEL and OFELIA
HERRERA,

Plaintiffs/Appellants,

v.

REDD ROOFING &
CONSTRUCTION CO., and CNA
COMPANY,

Defendants/Respondents.

**NOTICE OF
ERRATA SHEET**

No. 980084-CA

Priority No. 7

Page 29 of Appellants' main brief contains an error. The formula in the middle of the page reads:

$$\frac{\text{carrier's interest } \$147,922}{\text{net judgment } \$68,507} = \text{carrier's proportionate share of fees and costs} = 100\%$$

That formula should read:

$$\frac{\text{carrier's interest } \$147,922}{\text{net judgment } \$68,507} = \text{carrier's proportionate share of fees and costs} = 100\%$$

The corrected page with the error stricken and the correction red-lined is attached hereto.

DATED this 28th day of October, 1998.



ROBERT B. SYKES
Attorney for Plaintiffs/Appellants

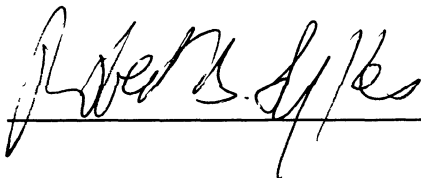
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF ERRATA SHEET was served upon all parties of record (listed below), first by fax on October 28, 1998 and then by hand delivery on October 29, 1998:

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ERRATA SHEET

Worthen, 426 P.2d at 226. “[T]o the extent possible” is an acknowledgment that there will not be an insurer reimbursement in every case, because there may not be money left over after the priority “disbursement [to the injured person] is complied with.”

The application of the formula to our facts shows the following:

EXAMPLE NO. 2

\$203,507	-	gross judgment
\$81,403	-	40% contingent attorneys' fee
\$53,596	-	expenses of litigation (costs)
\$68,507	-	net judgment
\$147,922	-	carrier's lien (\$21,320 past payment; and \$126,602 future benefits)

The carrier's proportionate share of attorneys' fees and costs is:

$$\frac{\text{carrier's interest } \$147,922}{\text{gross net judgment } \$68,507} = \text{carrier's proportionate share of fees and costs} = 100\%$$

The ALJ found that the carrier “is essentially entitled to 100% of the available \$68,507.25.” R. 167. Since CNA has a claim for 100% of the net recovery, “it must pay 100% of the attorneys fees and costs.” R. 167. The ALJ found that even though the above fraction would show a liability greater than 100%, since CNA's interest cannot exceed the net judgment, its interest is reduced to the amount of the net judgment. R. 166. The carrier's proportionate share of fees and expenses, as its interest appears, is the following simple mathematical calculation:

$$\begin{aligned} &\text{attorneys' fees and expenses } (\$134,999) \times \text{carrier's proportional share } (100\%) \\ &= \text{carrier's proportional share of attorneys' fees \& expenses } (\$134,999) \end{aligned}$$